

Provinces

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COMMUNITY LAW CENTRE
UNIVERSITY OF WESTERN CAPE

EMERGING
PROVINCES
AND
GOVERNANCE

CONSTITUTIONAL COMMITTEE OF THE
AFRICAN NATIONAL CONGRESS

8 - 10 December 1993

CONFERENCE ON REGIONAL
THE EMERGING

COMMUNITY LAW CENTRE
UNIVERSITY OF WESTERN CAPE

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PROVINCES
AND
GOVERNANCE

*The contents of this document are intended as a summary of
speeches and panel discussions at the conference.*

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CONFERENCE ON REGIONS:

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THE EMERGING PROVINCES AND GOVERNANCE

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Edited documentation of issues discussed during a three-day conference held at the Arthur Seat Hotel, Sea Point from 8 to 10 December 1993. The conference was jointly organized by the Community Law Centre, University of the Western Cape and the Constitutional Committee of the African National Congress.

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Editor: Minnie Venter

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ACKNOWLEDGEMENTS:

Never in the history of South Africa has the task of the civil service been more daunting and the responsibility of its public officers more challenging. The emergence of new regions, a new Constitution and a restructured society all bring with them the added obligation and demands on the new ANC government.

South Africans, a nation who have experienced decades of oppression and extreme despotism, are standing at the threshold of a new system of governance which will, for the first time ever, include all its citizens.

However, the struggle for freedom was only the start of the process; the struggle for the retention of democracy and good governance has to continue.

This *Conference on Regions: the emerging provinces and governance*, had as its objective the examination of the various aspects that are likely to impact on regional governance, the contents and resultant implications of the interim Constitution and to analyze these implications in order to achieve the projected ANC objectives.

When the ANC takes over the governance of South Africa, it will not be without inherent constraints and restrictions. The process of negotiations that led to the drafting of the first interim Constitution was a process of 'give-and-take', whereby concessions were made by all the negotiating parties in order to accommodate all South Africa's citizens. It was not necessarily the ideal process or result, but it opened the way for the ANC to continue the struggle for democracy.

The concept democracy was eloquently discussed by comrade Asmal who reiterated the fact that South Africa has only one way forward and that is through a fair and free system of governance with an independent judiciary. This will aid the principles of reconstruction and development of the ANC.

Under a new ANC government, many new elected parliamentarians and appointed civil servants will fill the Houses of Parliament. A crucial issue is to combine the loyalty of decades of liberation struggle with the new-found responsibility of Members of Parliament and civil servants. How the present Parliament functions, whether the same rules and regulations will apply, how they will be changed and what will replace the old system, are all questions uppermost in the minds of the people. And, when these questions are all answered, further questions remain: are our people trained to fill all these positions, what transition problems will we experience, etc.

We can look to examples from other areas where transition problems were experienced. Comrade Dalindyebo Nase explained many potential problems as per the examples from the

Transkei and the Ciskei. This, of course, led to the question of the incorporation of the previous bantustans and the absorption of their existing infrastructures and personnel.

South Africa is entering a unique system provincial government. This was not in accordance with ANC desires, but part of the negotiated settlement which emanated from Kempton Park. This system of provinces brings its own complexities. How were these provinces delimited? What are the implications of the Constitution for the new provinces? How will the new ANC government fund its programme of reconstruction and development on a national as well as regional basis? How do other countries organize their provincial governments? What models of policing will we establish in a new South Africa?

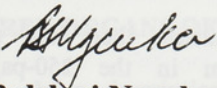
These were some of the questions which were answered during the three days of the conference. We did not have all the answers to all the questions, but we looked at ways and means of dealing with the daunting task ahead.

Our way forward will not be smooth or easy-going, and this conference will be repeated in all the regions so that our people can start to address the serious issue of reconstructing our nation.

The conference was organized by the Constitutional Committee of the African National Congress and the Community Law Centre of the University of the Western Cape with the generous sponsorship of the Friedrich Ebert Foundation. We are grateful for their assistance. The documentation of the conference was paid for by the International Development Research Centre for which we thank them.

A conference without speakers who impart with their wisdom and insights cannot happen. We thank the following Comrade speakers and panellists for their time, effort and enthusiasm: Kader Asmal, Dullah Omar, Jannie Momberg, Dave Dalling, Jan van Eck, Pierre Cronje, Renosi Mokate, Job Mokgoro, Phillip van Ryneveld, Sibusiso Nkomo, Al Johnson, Clifford Shearing, Giles Mulholland, Sindiso Mfenyana, Dalindyabo Nase and Zola Skweyiya.

Without the help and endless hours of work of our staff, Yousuf Gabru, Sonita Dalla and Celia Jack, this conference could not have taken place. We thank you for your dedication. And finally, the responsibility of writing and editing this document fell on Minnie Venter whom we thank.



Bulelani Ngcuka

Constitutional Committee of the African National Congress

CHAPTER 1

DEMOCRACY: REPRESENTATIVE OR PARTICIPATORY?

Kader Asmal

The Constitution that the African National Congress wants, will only be drafted after April 27 1994. It is therefore important to understand the structure and processes, and what is wrong with the interim Constitution. The ANC, through the constitutional committee, will begin drafting the new Constitution that the ANC will place before the Constitutional Assembly. The ANC has to present its version of a Constitution and it is thus necessary to know what is wrong with its structure, philosophy and basic approach.

DEMOCRACY DEFINED

Some democracies can be described as a camel. Everyone recognises a camel, but has difficulties defining it. This is the problem of democracies.

The Oxford dictionary defines democracy in two ways:

First, it is a form of government in which the sovereign power resides within the people as a whole. The sovereign power is exercised either directly by the people or by officers elected by them. This is the classical definition.

A more modern definition is that democracy more vaguely denotes a social state, in which all have equal rights without hereditary or arbitrary differences of rank or privilege.

Democracy, in its first meaning, comes from Greek meaning 'the rule of many', as distinguished from monarchy, 'the rule of one' or oligarchy, 'the rule of the few'. South Africa has had a racial oligarchy, where five million people, a minority, ruled.

DIRECT DEMOCRACY

Originally, direct democracy was based on the ancient

Greek city states, which were mini-states of between 500 to 8 000 people. 'All' the citizens took part in the decision-making (it was not democratic, because the Greek civilisation was based on slavery and slaves were not citizens). The citizens met in the evenings and decided what laws to pass, or decided whether the governor should be removed or executed. This was an intimate direct democracy. The material basis of the city states of Greece, which is called the home of democracy, was slavery. This is inconsistent with the modern notion of democracy.

There have been suggestions that South Africa should be made up of little city-states called cantons. Each canton will decide who will inhabit the canton and how it will operate. The breakdown of this is that citizens can stop people from entering the cantons. The 'volkstaat' will be a kind of canton.

Direct democracy does not apply anywhere, even in places such as New England and New Hampshire, used as examples of democracy in propaganda tours sponsored by the United States government, where town meetings are held. In reality nothing is decided at these meetings, in which the participants are rate-payers and rich people, who live in the North-Eastern parts of the United States. The real power is not exercised by the town-meeting. All citizens cannot participate directly any longer, apart from minor aspects of public business.

South Africa is too large and the demands on government too complex for all the citizens to take part directly. Therefore it is necessary to examine other concepts, where citizens may influence government.

Unlike in some other countries, there are no provisions for a referendum in the 250-page constitutional document. There may be provision for local referenda, unfortunately, to work out local choices as to the organisation of regions. Sub-regions may gear up for referenda as well.

REPRESENTATIVE DEMOCRACY

Direct democracy, even at a regional level, is not politically possible. Direct democracy even on a local government level is hardly possible. In a place such as Cape Town, two-and-a-half million people will be represented on the local level. Therefore, numbers, size and the complexity of government, makes direct democracy virtually impossible.

This does not mean that the Constitution, and the ANC's approach, should not enable people to participate more directly, clearly and openly in decision-making. SA will have a representative democracy, wherein sovereign power is exercised by the people through representatives, who are elected by the people. They will constitute a national or regional Parliament or local authorities. This will create a framework to choose the leaders.

In formal terms it simply means that every four or five years, the people will have an opportunity to choose their representatives and the method of electing representatives will be through political parties.

POLITICAL PARTIES

Political parties pursue policies. This is the organic, collective way of deciding on, discussing, articulating and agreeing on policies. The advantage of representation through political parties is the pursuit of ideological, political and philosophical policies, through institutions known as political parties. One can choose between separate, or even conflicting parties. This is important in South Africa, because it is possible that most parties will eventually become national multi-racial parties. The distinctiveness of the party will be founded in its policies. Representative government will function effectively when representatives are elected through political parties.

THREE ORGANS OF GOVERNMENT

The above description is inadequate because it subscribes to form and procedural rules, therefore developing a notion that democracy should have a separation of powers. This notion is present in the present Constitution, particularly in the first four

principles. A separation of powers is supposed to be inherent in the notion of democracy. It means, in broad terms, an identification of the organs of government, which are the Legislature, the Executive and the Judiciary.

POLITICAL INVOLVEMENT

The administration of justice is part of the government. It is necessary to have an independent judiciary. This does not necessarily mean that it is neutral. This is important because there is a general view that an ANC activist cannot be appointed to any post. Therefore, by definition, Democratic Party members, a centrist national party, can be appointed to all posts. However, those who have actively taken part in the liberation struggle and who still believe that there is a liberation struggle worth fighting for, are conceived of as being too politically involved, and therefore cannot be appointed. This is a heresy.

SEPARATION OF POWERS

The three organs of government were conceived by the liberal principles of the 18th and 19th centuries. In its absolute sense, one organ of government should not intervene in the operation of another and there should be a total separation of powers. Thus a person in the legislature cannot be in the Executive or have judicial functions. In theory, this is found in the USA. Therefore, a member of congress cannot be a cabinet minister with Clinton. Similarly, an appointment to the Supreme Court is for life. The Supreme Court decides (as a separate entity from the Executive and the Legislature), whether or not the laws past are constitutional.

In the SA system - as in Britain and Germany - such a separation does not exist. The elected parliamentarians become the Executive or the Cabinet. In South Africa the head of the Cabinet is the President elected by the National Assembly. In SA, Parliament passes laws, whereas in the rest of the world, Parliament passes laws only formally and they are then initiated by the Executive.

WHO MAKES THE LAWS?

The new South African Parliament, after April 27th,

will not constitute a large membership who will introduce laws. It will be the government of the day, hopefully in accordance with the principles of reconstruction and development, who will be preparing a programme of legislation. The aim is to have a time-table that will determine, by December 1994, that certain laws will be passed, because laws become the basis for action.

Thus, Parliament formally makes laws and the Executive has the monopoly. Occasionally, a back-bencher is allowed to introduce a law that is unpopular, such as abortion or capital punishment. Otherwise the Government introduces laws.

LEGISLATORS AND POLICY-MAKING

The ANC wants the legislators to be involved in policy-making only. They should not be like the gentlemen-politicians in the Tricameral system, many of whom are private lawyers or company directors. The ideal position is that legislators should be involved full-time who will keep in touch with the rank and file of the movement and the people who elected them. To ensure this, special machinery needs to be worked out.

AUTHORISING RULES

Laws are necessary, because they define the difference between dictatorship and democracy. In a dictatorship, the dictator rules by decree. In a democracy, the Government of the day, the Executive and the Civil Service, cannot take any decisions, unless there is a rule authorising it. The civil servant, executive, or hospital superintendent must have an authorization to act. If there is no authority, then the person on the receiving end can go to court to claim that there was no authority for action. When there is no authorization, the court can then rule that there has been a usurpation of power.

South Africa will not have a government of leaders only, but a government of the rule of law. Under the apartheid system, the Government passed more laws per year than in many other countries.

During negotiations the Government introduced last-minute issues, such as the re-organisation of schools and universities because the ANC was being accused

of violating university freedom. Yet, it was the Government representatives, who introduced these issues in order to remove control from the future government. Under the apartheid system, the rules were very broadly drafted and gave vast discretion to act. For instance, the minister was allowed, under the law, to do virtually anything. Under Section 29, the minister could detain anyone and had discretionary powers over allowing the detainee access to a doctor, priest or family. This was not regulated by rules, the minister had discretion to do what he wished.

Under a democratic order, this type of discretion will be necessary for reconstruction and development. All progressive governments have found, for example in Britain in 1945, that the government ought to have discretion to clear slums, for a housing reconstruction programme or to re-organise a hospital service.

In South Africa, even this will be controlled by the Constitutional Order. The new government will not have the discretion that the post-war government had, because, unlike Britain, South Africa has a written Constitution and a Bill of Rights.

STRUCTURES OF THE CONSTITUTION

The reconstruction programme will be in the context of the Constitutional Order, the Bill of Rights, and a new court system, which the ANC proposed in the form of a Constitutional Court as the guardian of the Constitution. The legislation that the new government will pass will be controlled by the Constitution.

The National Party first abolished the African vote, then the Coloured vote in the 1950s. This was possible, because there was no Higher Court to control the legislation. The Appellate Division tried to control it on procedural grounds, but it was unable to stop the government from passing laws that removed formerly-enfranchised voters from the voters-role.

Under the new Bill of Rights this will not be possible. The vote cannot be taken away from any citizen, unless s/he is an undischarged bankrupt, of which there are none in South Africa, because people do not get prosecuted, as yet. Thus, under the new Constitutional Order, there will be an over-arching regulation of Parliament's rights to pass laws, which can be tested under the Constitution and by reference

to the Bill of Rights.

Unfortunately, the people who use the Bill of Rights are not popular-based people, radicals, or progressives, but those who have property. Usually, those who want to contest the drunken-driving legislation, in many countries, state that it is unconstitutional and against the Bill of Rights. The same applies to property rights. It is necessary to be vigilant as to how the Bill of Rights is used and abused. The general position in the rest of the world is that those who have property will use their capacity to influence things to protect their material rights.

The Bill of Rights will control the capacity of Parliament to pass laws. The notion of the separation of powers means there has to be a separate Judiciary. The Executive will be in Parliament so there will be no separation.

THE DYNAMIC APPROACH TO DEMOCRACY

The above discussion involved procedure. At Kempton Park, most of the negotiators from the other side saw democracy as procedural matters, in terms of the form: such as the right to be represented by parties, to form parties, to stand for election, the conduct of elections, the separation of powers. The dynamic approach is that democracy, as respectable but radical concept, must be a system of government that satisfies expectations of justice and secures the protection of human dignity. These are the twin elements that have been the motivating force as far as the ANC is concerned. That it is not a formal matter, it is a debate that all of us should be entering. This is not value-free.

For three years, the ANC has argued that as free-market principles are constitutionally entrenched, socialism should be similarly entrenched. The Constitution should be value-free and neutral about economic policies. The ANC hopes that some of its economic and welfare policies should be so well entrenched, that after three elections (when the ANC deserves to be defeated), that no succeeding government can change them.

Democracy means something more than form and procedure. There should be an ombudsperson, as a protector of the rights of citizens. It is the job of the ANC to make the ombudsperson a powerful figure in

order to deal with corruption, maladministration and abuse of discretion. If a civil servant refuses a citizen his/her passport, because the civil servant has vast discretion, the ombudsperson should be in a position to intervene. There should also be a human rights commission, which, unfortunately, can only be elected by a 75 percent majority. There should be a gender-equality commission. These are structures that give content to the form of democracy.

REAL DEMOCRACY

In the judicial system, apart from the Constitutional Court, there will be regional courts. Expectations of justice and securing the protection of human dignity are a protection of human rights, the pursuit of social and economic rights. These are seen by many democrats as social features, essential for a democratic system. It is currently not fashionable to refer to Marxist theory. Yet, it is still the best way of explaining forms and structures. However, a bourgeois liberal democracy, which makes no attempt to control the economic power of those who can frustrate the execution of basic liberties, is not a real democracy.

Unless the Constitution and the constitutional order allow the curtailment of those who wield the economic power, then there cannot be a real democracy in the way the liberal democracy wants. Comrade Dullah said that those who want dispersal of political power, a de-centralisation or de-concentration of power, are the very people, who have the highest concentration of economic power in the world and in South Africa. These, the five major companies, that account for 85 percent of the quoted shares in the stock exchange, want a loose federal system, with an emasculated Centre.

DE-CONCENTRATION OF ECONOMIC POWER

One does not have to be a Marxist to understand that there must be some regulation and dispersal of economic power to bring about a democracy, or to understand that a concentration of economic power also means a concentration of political power, because the decisive decisions about investment and regulation are taken by a handful of people. The intellectual analysis of the approach to the

Constitution is not based on Marxist analysis, but on the basis of the French Revolution's declaration of the rights of man.

A democracy should not only involve the formal structures of government, but also the extent to which the government can satisfy the needs of the governed. Using this premise, the ANC has proposed a bill of rights, that does not look merely at formal aspects of democracy. The ANC struggled for all the formal rights;

- * of free movement in South Africa (which repudiates section 10);
- * the right to leave and enter the country, which is a departure from the Union Act;
- * the right to stand for parties;
- * to associate freely;
- * to form organisations, and
- * to practise individual culture and religion.

SATISFYING THE NEEDS OF THE GOVERNED

These are the important liberal democratic rights. A debate on the necessity of democracy, encompassing economic justice, was initiated. This is why the debate of the role and place of economic and social rights are not issues for discussion between the Constitutional Committee of the ANC and Tony Leon or Sheila Camerer or between sets of two lawyers. It is about how the society should be regulated, and particularly how economic power should be regulated. This is a concept of a social democratic order, which means that no-one should fall below a minimum.

Secondly, the process of satisfying the needs of the governed is a permanent process. Three ANC governments cannot bring about reconstruction and development. For example, six years ago, in order to win over the right-wing vote, the Labour party in Great Britain rejected the idea of full employment, which is a central belief of social democracy. In November, the idea of full employment was brought back. Even within movements there is a persistent strain of debate and argument over economic and

social policies.

The Constitution should address social and economic rights, which must be fulfilled in a progressive way. Structures need to be adopted, and these exist in the Constitution. Only the specific social and economic rights of children are recognised. Kempton Park rejected the idea of economic and social rights having equality with the liberal and political rights. As far as children are concerned, their rights to nutrition, education and dignity, have been recognised. Therefore, the ANC believes that one cannot recognise the rights of children to, for instance nutrition, without recognising their parents rights to the same.

In this way the ANC, for the next five years, will pursue the central and relevant role of economic and social rights in the Constitution. More importantly, economic and social rights must be seen in the context of affirmative action. There is a modest version of affirmative action in the Constitution. Even in the last minute, the so-called technical committee and ad hoc committees amended the August proposals which allowed affirmative action for purposes of redressing previous imbalances. Therefore, it is for the ANC to tease out, in political terms, how the affirmative action programme can be used to satisfy the needs of the governed.

Thirdly, a way of satisfying the needs of the governed, is to use the formal aspect of the Constitution to bring government to the people. The Constitution is a very legalistic document with rules for everything. The ultimate Constitution should be a slimmer version. However, this is a formal statement and to give greater content to it, is by ensuring that the form of the new Constitution brings government to the people. This is the most important challenge to the ANC. Because, ultimately, the ethos of the broader sense of representative democracy is the right of our people to influence opinion and action. This is the historic duty of the ANC.

GIVING THE CONSTITUTION CONTENT

It is necessary to overcome the form of the Constitution and give it content. What needs to be done is to ensure that the electoral system on local government level does not maintain the status quo, particularly not the geography of apartheid. It is

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necessary to be involved in the negotiations.

Secondly, it is necessary to have an approach, at local government level, there should be a town hall that represents the people's needs, so that the people can go to the town hall for welfare, health care and other provisions.

Thirdly, it is necessary to make arrangements, that ANC members elected from the lists, spend time in the region to ensure that they are answerable to the people and that they listen to their complaints, because in all democracies it is important not allow parliamentarians to be self-important representatives. In a real democracy, there should be a two-way process, that parliamentarians go back to the regions to hold clinics and to listen. This is the best way of involving the people.

Fourthly, a way has to be found for the African National Congress representatives to be accountable, answerable and sensitive; that they can be removed and replaced. Thus when the lists are being drafted, it is important to remember that although the ANC is a 60 percent party, the other 40 percent are also included.

Under the list system, one cannot cross the floor and join another party, which weakens democracy, because the member who leaves his/her party loses his/her seat. Therefore, those who are not performing their function as legislators, in local government or in the regions, lose their place. The ANC gives content to democracy by using the structures to replace them by other people from the lists, despite their perceived impotence.

If the African National Congress does not give shape and content to the Constitution, and this is the lesson from all countries, the African National Congress will become a one-election party. This is the real challenge of the kind of democratic order that the African National Congress will embark on after 27th April.

THE PILLARS OF DEMOCRACY:

1. The sovereignty of the people.
2. Government based on the consent of the governed.

3. Majority rule.
4. Recognition of the individual rights of dissenting minorities, whether based on gender, sexual orientation, politics, religion or culture.
5. Guarantee of basic human rights.
6. Free, fair and periodic elections.
7. Equality before the law (or more precisely, equal benefits under the law).
8. Due process of law. There has to be the right to challenge governmental action to protect rights.
9. A written Constitution, with limits on the power of the government. Though the problem arises as to where one draws the line on the limits on the powers of the government.
10. Social, economic and political pluralism, a more difficult notion.

Democracy has certain values of social democracy, of tolerance and of cooperation. This list is mentioned, because there is no agreement in South Africa about these ground rules. Therefore the African National Congress have passed, in form, a democratic order, but it have not yet agreed on all the ten factors identified.

DISCUSSION

Q. Regarding the concentration of economic power, which decides where the weight of the popular power will be. We can have formal democracy, but the difficulty lies in defining real democracy, which is being debated by all the people. Democracy can end up being elitist. How does one shift the balance of the economy - considering the reference to Karl Marx and his concepts. What we have been addressing is the super-structure. Our fear is that we are going to be swallowed up by the system.

A. Philosophers have spent 200 years trying to define the real nature of democracy. There is no agreement. Your notion of real democracy may be totally

different to mine.

Secondly, the Marxists have written extensively in the last 150 years of the relationship between the super-structure and the base, particularly in the relation to human rights. This reductionism, that all human rights and Constitutions are part of the super-structure has resulted in the perversion of Marxism as it was applied. This must not be dismissed because there is a relative autonomy. For example, freedom from torture is part of the super-structure, no-one should be subjected to torture, regardless of ideology.

One cannot say that this is part of bourgeois liberalism. We have learned that at least a democratic order that allows a central government to take some decisions, that this is allowing for the protection and control of property, can work. The ANC does not have a rigid view. In a recent article from Havana, it was stated that they are moving to the market in an accelerated way. There the state has the controlling property ownership and they have very overpowering reasons for doing so. However, they are presently allowing foreign investment which indicates that it important not to be too reductionary.

To answer the question: providing that there is content given to the concept of reconstruction and development, this will allow us to transfer resources, through equitable taxation policies, we can transfer resources into welfare, health and education. This will be changing the nature of the South Africa.

Taxation is one of the ways to redistribute resources and investment by the state is another method. The concentration of power is detrimental to democracy. For instance, Gencor has recognised this and are unilaterally restructuring. This is part of the anti-trust legislation.

We have learned from the experience of the past, that large-scale national ownership of resources is inefficient and not always in the interest of the people. We have also learned that the state is not a good body to run the grocery system, like they tried to do in Guinea, where they tried to run all the grocery shops. As a result there was no food in the shops, when the state ran them. Now that the whole-scale nationalisation has been abolished, the intervention of the state must be targeted. One of the principal areas is to free business and diversify through anti-trust legislation. The ANC had a struggle, when the

Constitution was being worked out, to allow for this type of legislation. The Constitutional order allows us to have anti-trust legislation and anti-monopoly legislation.

The ANC must invoke the principles of competition. For instance, in the cement industry there is no competition. The fact that there is a cartel means houses cannot be built cheaply.

There are many techniques of intervention. South Africa can have a welfare-state with a concentration of the ownership of property. A welfare-state as Sweden or Germany have, with large concentration of ownership. A welfare-state that not even Thatcher and the Thatcher-principles could undo in Holland, then this is a revolutionary quantum leap for our people that we can have a welfare-state, where nobody fall below the minimum. That there is right of access to housing, health and welfare, job-creation and an opportunity of training and re-training, where redundancy does not mean one gets thrown on the rubbish dump of unemployment, but that you can be re-skilled. That we can have a welfare-state in the South African context is a revolutionary thought. Whatever the economic and social welfare policies, it must be done on the basis of pluralism, because without it we cannot have reconstruction in South Africa.

Q. 1. The comrade mentioned that the ANC should lose the election after three elections. This may be true, but how does the ANC plan to build in mechanisms in the Constitution and programme of development that stop us from being taken back to the years of apartheid.

2. The distinction between representative and 'direct-rule' (Athenian) democracy, that local government may be run by independents, not by political parties, seems to be counter to the discussion.

Q. On the issue of participatory and representative democracy: can a link be established to address the reconstruction and development programmes. How does participatory democracy impact on representative democracy?

Q. Cartels and the need for anti-trust legislation implies that only the rich can compete in industry. Yet, the people on the ground are the ones whose standard of living the ANC wants to improve. How

can this be done? Some of the wealthy are black persons, whom one would expect to be from disadvantaged communities. This is obviously not the case, because they have been enriched through benefitting from the apartheid system. Where does this leave us with the objectives of the struggle?

Q. 1. Concerning direct representation and representative government: the one cannot be exclusive to the other, because although participatory democracy worked in cantons of 800 to a few thousand people, citizens now have access to politicians via television. Participation is also done via representation, it is a channel that you have to follow to get to participate in a democracy. There is no provision for a referendum in the Constitution. How was this decision arrived at a national level?

2. What is the comrade's personal views about the limitations of the Constitution? What are the possibilities of pursuing the issues the ANC wants to change in the Constitution before it is finalised in five years time? Does the constitution have provisions that guarantee the right to live above the minimum living standard, such as housing, welfare, etc?

A. A party that stays in power too long becomes corrupt, particularly a reforming party, and it is not unacceptable to go into opposition after ten or twelve years, to re-model itself.

In order to go back to apartheid, the Constitutional order has first to be destroyed, which will have to be through a coup d'etat. If the minimum floor of social rights is accepted, such as Germany's sozialstat, no government will be able to pass legislation violating what is the accepted and therefore the constitutional minimum floor. In Germany there was no Thatcherism, because the Constitutional Courts said these are social rights to all citizens. This is why the Democratic Party has fought against economic and social rights, because it limits the rights of the succeeding government to change the social and economic policy, particularly in the welfare area. The real debate on the Constitution is going to be about the place and role of economic and social rights, and that is the one way of emancipation and development. In constitutional terms the way to do it is to have the minimum rights approach which no government can change.

Regarding representative and direct democracy: to be

able to phone the President is not participatory democracy, but a misconception. This, however, does not mean that participation is not your right. What is important is who decides the policies. Originally in the Greek city-states, two hundred people actually decided on policy. There are many ways to mould and influence policy, the best way being through the independent organs of society, which are vital, working cooperatively with the ANC, but ultimately being independent. Telephone calls and opinion polls are not a form of participatory democracy, but a way of obscuring decision-making. Opinion polls are often used for this purpose. Therefore we are not going back to participatory democracy. What we should be working out is structures where people can be recalled, be really answerable, and fire the people which can be done under the list system. There is much more participation in policy-making.

There is a provision in the Constitution for a referendum on the regional and local level, to work out boundaries. The referendum was not seriously pursued at Kempton Park and no one seemed to propose it, because in the South African situation where we do not have agreement on the ground rules, referenda can be very reactionary. One can have a mandatory referendum to include a term in the Constitution, banning abortion, for instance, and they will win that referendum, with a combination of forces in our country. Or there can be a negative referendum, to remove a provision from the Constitution. It is worthwhile debating the notion of referendum, as there has never been a real referendum in South Africa. However one is instinctively opposed to referenda, because of what has happened in America, Switzerland, and elsewhere. These played on the morals, faith and style areas which are reactionary issues.

It is possible to create a link between participatory and representative democracy, although one should be careful in drafting these. It can also be a stylistic matter where the contents are left out, or if you take a heavily bureaucratic style, such as in many African countries have adopted after independence, which elects a party, who then forget the rest of the people and are not answerable to others. Whereas a positive style, (what is important for the African National Congress in the next couple of years is to constantly refer back to the people), a celebration of democracy can give content as to how the ANC can celebrate democracy.

Although the poor cannot compete, it does not mean that one should leave the rich to carve up markets and arrangements of sharing resources. It is necessary to ceaselessly give attention to co-operatives. The African National Congress' economic department has a policy to empower the informal market, but this market does not control power. It is important to get the people involved, but this does not transfer resources nor power. Serious attention should be given to real co-operatives and land utilisation as a lot of fallow land will be transferred. This is important also because it is within the African communal tradition, which apartheid has not totally destroyed. It is important not to exaggerate extent to which people can work in co-operatives, because it brings out the worst in human beings (sic).

As a device it is important for both the Constitutional Committee and the economic department to take a serious look at it. There are different forms of co-operatives, of producers, of owners and for marketing. This is how one can empower the penniless. The co-operatives are non-corrupting because the people are responsible for the resources.

Answer to: to what extent does this affect the ANC's position. To a large extent the Constitution meets the ANC's needs. Although we are critical about it, it excludes the fundamental assumptions of the National Party, which is firstly permanent power-sharing, which was their aim. Secondly, the NP position was that group rights - ostensibly racist rights - should be entrenched in the Constitution, when negotiations began. Furthermore, it was felt political power should be associated with group rights. Both in the bill of rights and the structure of government, they were struck down by the ANC. Most importantly, they wanted local government, small communities, to have the power. Norms and standards had to be maintained. On these basic issues, the ANC won.

What is excluded was the question of the power of the central government. Concessions were made in relation to regions, which were necessary for the negotiations. These were unnecessarily complex and need to be re-examined, but these are part of the issues that South Africa faces, in that power is not concentrated and there are diverse views.

Ultimately a democratic order is concerned with two features:

- (1) How will this order treat the ANC, when it is in the opposition?
- (2) How will the order treat the ANC member, who dissents from his/her own party.

This order provides for adequate defence, when or if the ANC is in opposition and if a member dissents from their own party, enabling the real debate in this country to begin, on the basis of this Constitutional order, which is not about the form of procedure, it is about economic and social justice.

CHAPTER 2

PROVINCIAL GOVERNMENT IN THE NEW CONSTITUTION

Dullah Omar

The background to the Constitution:

The input is not intended to be an evaluation of the Constitution, nor is it designed to suggest any improvements. Many changes will be necessary in the final Constitution because there are serious defects in the document of 250 pages. It should not be glorified as a document which is a product of an undemocratic forum in which many parties participated with the objective of entrenching as much of the status quo as possible. When a document arises from such a process, there are bound to be problem areas that need to be dealt with. That process has been completed and the ANC has survived.

The battle was fought to achieve two objectives:

1. to create a democratically elected Constituent Assembly, which will have the power to draw up a new Constitution for the country and
2. the African National Congress wanted to ensure that no mechanisms, structures or rules were created that will encumber the new South Africa.

Chapter 5 in the Constitution deals with the adoption of the new Constitution. The other chapters deal with how the country will be governed during the period of transition. The provisions are so detailed that Cyril Ramaphosa called it a Peace Treaty, rather than a Constitution.

The input will concentrate on the question of 'regional powers', and attempts to give an account and an analysis of the Constitution. To clarify some terminology, in the Constitution regions are referred to as provinces.

The Constitution provides for two things:

1. the process through which the new

Constitution is to be adopted by an elected body and

2. for how the country is going to be governed during the period of transition.

The Constitution makes provision for a parliament which will consist of two chambers. Firstly, a National Assembly which will consist of 400 persons, who will be elected in accordance with a system of proportional representation (200 from national lists and 200 from regional lists). Secondly, there will be a Senate which will consist of 90 persons: nine persons per province. Both the National Assembly and the senate will be involved in passing legislation. Ordinary legislation will require the approval of both houses, except with regard to financial matters, where the senate will only have delaying powers. With regard to the adoption of the final Constitution by the Constitutional Assembly, which is the essence of what we have been fighting for, the Constitution provides for the two houses to sit together. The 490 representatives constitute the 'Constitutional Assembly'.

The Constitutional Assembly is required to adopt a new Constitution for South Africa within a period of two years, by a two-thirds majority. If it fails to adopt a new Constitution by this majority, certain procedures will take place. The Constitution has to comply with the constitutional principles, the Constitutional Court will judge whether any constitutional text complies with the constitutional principles or not.

Within the framework of the adoption of the Constitution, provision is made for a panel of five constitutional experts to whom a Constitution which enjoys a simple majority will be referred. The panel will attempt to produce a text which will enable a two-thirds majority to be obtained. The panel of experts has 30 days, and if it does not succeed within this time-limit, a Constitution which enjoys a simple

majority in the Constitutional Assembly, will be put to the people in the way of a referendum. If such a Constitution enjoys the support of 60 percent or more of the electorate, the Constitution will be regarded as having been adopted. If in such a referendum a majority of 60 percent is not attained, then the Constitutional Assembly will be dissolved and fresh elections will take place.

The new Constitutional Assembly, similarly constituted, will be required to adopt a new Constitution, within the period of one year, by a 60 percent majority. This is the procedure for the adoption of the new Constitution. It is important for the ANC to extract from the document what is important for it, and to ensure that the African National Congress works towards its ends, and ultimately critically consider the Constitution to ascertain which provisions are useful and which are not, and what is the package that the African National Congress should go for in elections and in the Constitutional Assembly.

A final point regarding the background to the Constitution is the concept of the government of National Unity. This concept has been confused with the concept of power-sharing, and the words have been used interchangeably by the media, the Government, and generally by those who want power-sharing.

The provisions in the Constitution are the following:

1. that there will be a President, elected by the National Assembly. One of the first tasks of the elected Assembly will be to elect their President. A heavily-disputed area in the negotiations was that of Deputy-Presidents, and in fact the issue of the Presidency as a whole. During the course of negotiations, agreement was reached, that a party which wins 20 per cent, or 80 seats or more in the National Assembly, will be entitled to designate a Deputy-President. Where only one party or no parties attain 80 seats, then the largest party and the second largest party will designate a Deputy-President. This means in practise that a party that wins the elections, will put forward a President and will also be entitled to elect one Deputy-President. The party which is the second largest party will designate the second Deputy-President.

In practise it is very unlikely that there will be

another party that will win 80 seats or more, but in theory it is possible. In practise it seems that the ANC will end up with a President and two Deputy-Presidents.

The Constitution defines that the Deputy-presidents are entitled to be consulted, by the President with regard to policy matters and the running of government generally. The demand of the NP was that the decisions of the President should be taken in consultation with the Deputy-Presidents. This would have meant a form of consensus decision-making. The decision ultimately reached was that such a procedure will not be necessary and all that the Deputy-Presidents can expect is to be consulted by the President. Then the President takes his decisions the way he chooses. Furthermore the Deputy-President have a duty to carry out such functions as are allocated to them by the President.

The Constitutions provides that there shall be a Cabinet consisting of no more than 27 members. The DP and others political parties objected about the number of ministers, suggesting that such a large Cabinet would lead to a bloated government. However, the Constitution states that the number should be "not more than 27", it does not say there will be 27. It is therefore at the discretion of the government of the day to decide on the number of ministers. This discretion is important, because if the number of portfolios is kept low, then it means that the number of important portfolios will have to be shared with other parties.

The bigger the Executive, the more portfolios can be allocated according to the wishes of the ANC. The President will have greater discretion when it comes to the allocation of portfolios. From the point of view of the ANC, you do not want to develop a bloated bureaucracy. From a political point of view, it is important that the President and the government of the day should have maximum discretion in the allocation of portfolios.

The allocations of portfolios and seats: these will be allocated in accordance with the number of seats that parties have won in the elections. To qualify for seats in the Cabinet, a party should have won at least five percent of the seats nationally. Seats will be allocated in proportion with the number of seats that the party has won in the National Assembly. The biggest problem during negotiations was the question of

decision-making of the Cabinet. The NP position was that decision-making in the government of National Unity, should be by consensus. This battle raged until the night that the ANC President met De Klerk. They finally resolved the matter. The result was that the Constitution has no provision which requires consensus in decision-making.

The Cabinet can take its decision by a simple majority. At the same time there is a provision in the Constitution which states that the Cabinet should function in a manner which gives consideration to the consensus-seeking spirit underlying the concept for a government of National Unity as well as the need for effective government. The President and governing party will at all times try to win a consensus in the decision-making process, to try to win maximum support.

At the same time there is a need for effective government. The government must never be faced with a situation where there is a dead-lock in the Cabinet. Therefore, if everything else fails, effective government requires that the Cabinet takes its decision by a majority vote.

POWERS, FUNCTIONS & REGIONS

Provincial government:

South Africa will be divided into nine provinces. These provinces are the Eastern Cape, Eastern Transvaal, Natal, Northern Cape, Northern Transvaal, North West, Orange Free State, PWV and Western Cape. Certain areas face an uncertain future, because the people in those areas have the right to invoke a referendum in order to determine their future.

Firstly, in the Eastern Cape region, provisions are made to have a referendum after the setting up of the National Assembly, to determine whether it will be one or two regions. This decision will have to be taken by a 60 percent majority. Secondly, a decision will have to be made whether the Northern Cape should remain a separate region, or return to the Western Cape where it rightfully belongs. This too will be decided by way of a referendum. The future of Umzimkulu in relation to Pretoria and some of the areas around Pretoria will have to be decided.

The Constitution makes provision for a Legislature to be established in each province. An agreement was reached to allocate 200 regional seats between the provinces, with, for example 42 for the Western Cape. It was decided in advance how many seats there will be in the Provincial Assembly. There is Provision for a Premier. S/he will be elected by the Provincial Legislature at its first sitting. The Premier will be responsible for the execution of duties as the Head of the Executive. The Executive will consist of a maximum number of ten persons. The functioning of the Executive will be along the same lines as that of the Cabinet. In other words, in its decision-making processes it will give consideration to the consensus-seeking spirit of the concept underlying the concept of a Government of National Unity, as well as the need for effective government. This formula applies at the regional level as well.

Legislative competence of provinces:

Section 126 (p.105) of the Constitution) states:

- (1) A provincial legislature shall, subject to subsections (3) and (4), have concurrent competence with Parliament to make laws for the province with regard to all matters which fall within the functional areas specified in Schedule 6.

Schedule 6: Matters referred to in section 126

Agriculture

Casinos, racing, gambling and wagering

Cultural affairs

Education at all levels, excluding university and technion education

Environment

Health services

Housing

Language policy and the regulation of the use of official languages within a province, subject to section 3

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Local government, subject to the provisions of Chapter 10

Nature conservation, excluding national parks established by or under the National Parks Act, 1976 (Act 57 of 1976), national botanical gardens and marine resources

Police, subject to the provisions of Chapter 14

Provincial public media

Public transport

Regional planning and development

Road traffic regulations

Roads

Tourism

Trade and industrial promotion

Traditional authorities

Urban and rural development

Welfare services

Section 126 continues:

(2) The legislative competence referred to in subsection (1) shall include the competence to make laws which are reasonably necessary for or incidental to the effective exercise of such legislative competencies.

(3) An act of Parliament which deals with a matter referred to in subsection (1) (which is Schedule 6 above) or (2) shall prevail over provincial law inconsistent therewith only to the extent that -

(a) it deals with a matter that cannot be regulated effectively by provincial legislation;

(b) it deals with a matter that, to be performed effectively, requires to be co-ordinated by uniform norms or standards that apply generally

throughout the Republic;

(c) it is necessary to set minimum standards across the nation for the rendering of public services;

(d) it is necessary for the determination of national economic policies, the maintenance of economic unity, the protection of the environment, the promotion of inter-provincial commerce, the protection of the common market in respect of the mobility of goods, services, capital or labour or the maintenance of national security; or

(e) the provincial law materially prejudices the economic, health or security interests of another province or the country as a whole.

(4) An act of Parliament shall prevail over a provincial law, as provided for in subsection (3), only if it applies uniformly in all parts of the Republic.

(5) An act of Parliament and a provincial law shall be construed as being consistent with each other, unless, and only to the extent that they are, expressly or by necessary implication, inconsistent.

(6) A provincial legislature may recommend to Parliament the passing of any law relating to a matter in the respect of which such legislature is not competent to make laws or in respect of which an Act of Parliament prevails over a provincial law in terms of subsection (3)

In the previous Constitution which was first published, provision was made for exclusive powers for provinces. The previous section was 118 and there were two subsection in 118, which dealt with the question of regional powers. Firstly, section 118 (1) set about a number of functional areas the provincial legislatures and executors, will enjoy exclusive powers. Section 118 (4) made provision in respect of competencies which will be concurrent. Concurrent jurisdiction between national government and provincial government. In the second area, the national government will enjoy over-riding powers, in

other words there was a distinction between exclusive powers and concurrent powers.

The final formula contained in section 126 does away with the concept of exclusive powers. There are, therefore, a number of matters in respect of which a number of functional areas in respect of which both the centre and the province will exercise concurrent powers. For this purpose it is necessary to refer to schedule 6 (see above), because it shows the functional areas in respect of which these concurrent powers will exist. In respect of these powers, national government and provincial government will exercise concurrent powers. In respect of all other matters, they fall within the powers of national government, for instance all residual powers lie with national government.

There has been some confusion within the ranks of the ANC, because they said that national powers or competencies have not been listed. The idea of listing powers of national government, arises within the framework of a federal Constitution, where national powers are listed to decide the position of residual powers. When all residual power is left to the centre, it means that the centre can do in respect of all the powers, except those that are listed, what it wants to do. So it is a much better formula.

In the negotiations with the Freedom Alliance the proposals involved national powers and functions, as well as the listing of the concurrent powers. A third category of residual powers, which, according to those proposals will be shared concurrently between national and provincial level. This was the proposal put on the table by the government for discussion in this regard.

Section (3) of section 126 is the most important. With regard to education, housing or health care, where the legislation deals with matters that cannot be regulated effectively by provincial legislation, then legislation by Parliament will prevail. Section (b) deals with a matter that, to be performed effectively, requires to be regulated by uniform norms or standards that apply generally throughout the Republic. Again, in this instance, national legislation will prevail.

Where legislation is necessary for the purposes stated in (d), national legislation will prevail and in the case of all subsections national legislation will prevail. In terms of section 4, an act of Parliament must not deal

with a situation in a single province, it must be a general piece of legislation.

Subsection 1 states that provincial legislation shall prevail. Subsection 3 creates the criteria, in respect of which, an act of Parliament will prevail. This means that firstly, the national parliament can make laws, in respect of any matter whatsoever, whether it falls within schedule six or not. Secondly, a provincial legislature may only make laws in respect of those matters which are listed in schedule six, not in other matters. Thirdly, both Parliament and the provincial legislatures may make legislation in respect of these matters at the same time.

Regarding education, for example, National Parliament and provincial Parliaments can pass legislation. If the provincial Parliament has not passed any laws, but National Parliament has passed legislation, then this legislation will apply throughout. Where national legislature has passed a law on education, and provincial legislature has also passed a law, then, where it is necessary in respect of the criteria set out in (3), national legislation will prevail. In other words if National Parliament passes a law, to ensure that there are uniform standards throughout the country, and that there is a rendering of public services throughout the country, then any provincial legislation, which contradicts that legislation, will not be legal or valid in terms of the Constitution. To the extent that it is not necessary for the purposes of these criteria, provincial legislation will prevail. If, for example, for the purposes of running schools, and within the framework of national criteria, provincial legislature makes certain laws, and National Parliament also makes laws, the provincial legislation will prevail.

The result is competing over-riding powers, where it is necessary to satisfy these criteria, for national legislation to be passed, then the national over-ride will apply. But, where it is not necessary, then the provincial over-ride will apply. It is therefore necessary to examine the criteria set out in subsection three.

A matter that cannot be regulated effectively by provincial legislation, to be performed effectively, requires to be regulated or coordinated by uniform norms or standards that apply generally throughout the country. These are quite wide and relate to criteria, standards and (c) to minimum standards

across the nation for the rendering of public services.

Section (d) is a particularly wide point for which the ANC fought for while the NP fought to keep out. This is called the 'Commerce Clause' in the United States of America. The US Congress has passed legislation after legislation on various issues such as facilities and education, because they argue that for the purpose of economic unity, it was necessary to deal with various matters. So, under the Commerce Clause, the US Congress has ridden rough-shod over state legislatures. This is an important clause to enable National Parliament to pass laws in respect of a variety of matters which we have here.

The concept of the protection of a common market, in respect of the mobility of goods, services, capital or labour, or the maintenance of national security involves many aspects. It involves not only taxation, but also legislation involving workers, legislation regarding industry, commerce and education and training, because under the maintenance of national security, many things are involved.

Subsection (6): A province can pass a law, for example, that only people born in the province may do certain things or they may try to create some form of provincial citizenship, or rules with regard to commerce or taxation, which creates an imbalance. If for example Ciskei passes legislation that companies need not pay company tax, whereas there is national taxation, this will be a threat to national security and the interests of other provinces, because companies will flock to that particular area. This cannot be allowed to happen, and will not be allowed under these provisions.

There are no exclusive powers, but concurrent powers in the areas referred to where certain rules will apply. The problems with the situation are (1) it is bound to create lots of disputes, because once you create competition between national and regional, it is bound to create disputes. It will give lots of work to lawyers, and many matters relating to these will end up in the Constitutional Court. The problem with matters going to the Constitutional Court is that it judicialises the political system. It will create a situation where the Judiciary will determine policy and not Parliament. This was a matter the ANC fought in the negotiations.

A situation where courts make law is undesirable. It

is the democratically elected Parliament that should have the sole prerogative to make law. We have the experience of the US where courts have struck down legislation over a period of many years. The state passes legislation to protect the workers and the courts strike it down because it contravenes the principle of liberty and property, which are the dominant notions of the US Constitution. It becomes problematic when the courts are given too much power, especially in matters of a political nature. The advantages of this formulation lies in subparagraph (3), the criteria which we have there, which will ensure that National Parliament will have over-riding powers in many matters.

The implications of the above issues, to the Constitutional Assembly: will it have the power to deal with these matters? Once a situation is produced and structures and bureaucracies are created, it becomes difficult to dismantle. In theory it is possible for the Constitutional Assembly to deal with them and to alter them if necessary, provided that it works within the framework of the constitutional principles, which are set out in the transitional Constitution as well.

The next area which is related to the power and the function of regions is the issue of financial and fiscal affairs. This matter is dealt with in section 155, which states:

- (1) A province shall be entitled to an equitable share of revenue collected nationally to enable it to provide services and to exercise and perform its powers and functions.
- (2) The equitable share of revenue referred to in subsection (1) shall consist of -
 - (a) a percentage, fixed by an Act of Parliament, of income tax on individuals which is collected in the province;
 - (b) a percentage, fixed by an Act of Parliament, of value added tax or other sales tax which is collected within the province; and
 - (c) other conditional or unconditional allocations of national revenue made in terms of this section to the province.

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- (3) The percentage referred to in subsection (2)(a) shall be fixed reasonably after taking into account the national interest and recommendations of the Financial and Fiscal Commission.
- (4) Allocations referred to in subsection (2)(c) shall be determined in accordance with an Act of Parliament, with due regard to the national interest and after taking into account-
 - (a) the provision that has to be made for interest and other payments in respect of the national debt; and
 - (b) the different fiscal capacities including the revenues derived from sources referred to in (2)(a) and (b), fiscal performances, efficiency of utilisation of revenue, needs and economic disparities within and between provinces, as well as developmental needs, administrative responsibilities and other legitimate interests of the provinces, and any other objective criteria identified by the Financial and Fiscal Commission; and
 - (c) the legitimate needs and interests of the national government; and
 - (d) the recommendations of the Financial and Fiscal Commission.

To sum up the situation: the Constitution will create a Financial and Fiscal Commission, which will make recommendations to Parliament with regard to the allocation of resources, fiscal policy, taxation, the allocation of revenue to the provinces, and what powers should be given to the provinces to raise taxes, to impose user charges and to raise loans. This has also been a contested area, because an attempt was made to get the Financial and Fiscal Commission to have powers not only to make recommendations to the Parliament, but to decide. And Parliament will be bound by these decisions. The negotiated package ensures that the Commissions have the powers to make recommendations and to advise, but Parliament takes the ultimate decision.

Section 155 makes provision for a province to receive an equitable share of the revenue collected nationally.

Section (156) of the Constitution deal with the power of provinces to levy taxes. This issue was hotly contested during negotiations. The proposal emanating from the Freedom Alliance and initially from the National Party as well, was that the provinces should collect revenue and allocations made from revenue collected by the provinces for the use by central government, which would effectively have destroyed central government.

The independent power of a province to raise revenue, determines to what extent it has powers. A province can be given all types of competencies and areas of responsibility, but it cannot be given total control of its revenue. The section further states that a province may levy taxes, surcharges or levies, "provided that it is authorised to do so by an Act of Parliament, passed after a recommendation of the Financial and Fiscal Commission on the content of any such Act in its draft form have been submitted to and considered by Parliament". In other words no province may levy taxes unless it is based on the recommendation of the Financial and Fiscal Commission and unless it has been approved by Parliament, thus the levying of taxes is controlled by Parliament. The framework is one which ensures that all fiscal matters fall within the powers of central government.

Section 157 deals with the raising of loans by provinces. Once again, a province may raise loans for capital expenditure, it must do so within the framework of norms and conditions prescribed by an Act of Parliament. It may not raise loans for current expenditure.

The above is an explanation of the composition of provincial government, and of the powers and functions of provincial government, in Schedule 6 and Section 126. Thirdly, the right of provinces to raise revenue has been discussed.

The Constitution provides that a province may adopt a Constitution. This was a contested area as well and is one of the compromises that the ANC has made, to allow a province to adopt a Constitution, but those provisos are, that such a Constitution must be adopted by a two-thirds majority of the provincial legislature.

Secondly, the Constitution must comply with the constitutional principles set out in the national Constitution. Thirdly, it must not be in conflict with the transitional Constitution, nor must it be in conflict with the final Constitution adopted by the Constitutional Assembly.

THE COMMISSION ON PROVINCIAL GOVERNMENT

There was a commission on regions and it is on the basis of the recommendations of this commission that the nine provinces were created. The Constitution makes provision for the President to appoint a commission on provincial government, after the President has been elected by the National Assembly. The commission will make recommendations to the Constitutional Assembly on the final boundaries, powers, and functions of regions. A Constitutional Assembly will have the right to take the final decision in respect of these matters.

THE RE-INCORPORATION OF THE TBVC-STATES

This area too, has been a big area of contention. It was dealt with in the following way:

1. The Commission on Regions, in making its recommendations, worked on the assumption, that the home-land system will be dismantled and the TBVC. So the recommendations for the nine regions assume that there will be re-incorporation.
2. In many other parts of the Constitution, where rationalisation is dealt with, it is on the assumption that re-incorporation will take place.
3. To legalise the process of re-incorporation, the Constitution defines national territory as including the TBVC territories. The effect of that provision is that when this Constitution comes into force, the TBVC territories are automatically re-incorporated into South Africa.
4. The government finally agreed to the African National Congress proposal, that

there should be a separate law passed immediately restoring South African citizenship to all the people of the TBVC territories, with effect on January 1, 1994.

We have a total package with regard to the formation of regions, powers and functions, the dismantling of the home-land system and the re-incorporation of the TBVC-territories.

There is a provision in the Constitution which deals with rationalisation in administration. The effect of the package is that all existing political structures, Parliaments, Executives etc. will disappear with the completion of elections in the country and the inauguration of the President. Section (126) must be borne in mind in reference to this. For example the TBVC-territory and those matters which fall into the functional areas of schedule (6) will be allocated to the provinces, and the matters which fall outside these, will be allocated to the national government, subject to the condition that national legislation will prevail, in terms of the criteria mentioned.

But, rationalisation is not only required in respect of the home-lands and the TBVC-territories, but also in connection with other apartheid structures throughout the country, the Tricameral structures for example, separate administrations. The transitional arrangements in terms of rationalisation took approximately one week to negotiate.

There are many imperfections in the Constitution, because many people retain their jobs during this period. However, the formula that we have won is a good one. It says that people retain their jobs and their conditions of service until such time that they are altered by law. In other words a democratic Parliament has the right to deal with all those matters in all the categories in any way that it may deem fit.

DISCUSSION

Q: What are the flaws of the Constitution?

DO: The National Assembly consists of 400 members. Democracy is expensive and it is important to take into account what political structures will cost when creating them. The Constitution creates jobs for many people, in governments and bureaucracies, both at provincial and at national level. This is a

weakness. The National Assembly is too large.

The formula for the allocation of powers and functions is too complicated. There should be a situation where there are concurrent and over-riding powers. The Union Constitution of 1910 created a list of powers, in respect of which provinces and national government had concurrent powers, but it also provided that national government would have over-riding powers, which eliminated all uncertainties and the need for court action in Constitutional Courts. Getting a simpler formula depends on the balance of forces in the country, on whether the African National Congress wins with a sufficient majority, enabling it to develop this kind of formula and inserting it in the Constitution. However, the present formula is acceptable, but flawed.

The provisions for local government have been criticised, particularly the division of representation, 40 percent proportional representation, 60 percent wards. These are meant to apply to the first election. Nonetheless, we need to ensure that we clean up the Constitution, and create democratic local government.

Chapter 3 of the Constitution deals with fundamental rights during the period of transition. Although it contains a number of rights that are worth preserving, many of the individual right, freedom of association, of belief etc. are good, there are serious flaws in this chapter. It is only of vertical application, which means that the private sector is virtually insulated from the application of the Bill of Rights. The greatest beneficiaries of the apartheid system has been the private sector and it is here that apartheid is entrenched and will remain entrenched after the adoption Constitution and after the elections. The failure to provide for the horizontal application of the Bill of Rights is of serious concern. It means that non-discrimination and the equality provisions, may eventually not be applied in certain areas.

Secondly, with regard to fundamental rights, there is no sufficient provision for social and economic rights. The ANC Bill of Rights has comprehensive provisions made with regard to these rights. Provision is made for the establishment of a minimum floor of rights with regard to various matters. This is an area that needs to be addressed.

Many matters which dealt with in the Constitution

are not really constitutional matters, but they had to be dealt with in the Constitution, because of the fear of the NP, that a new democratic government will deal in a whole-sale manner with all kinds of things. Chapter 5 is the only one that deals with how the Constitution will be adopted. The rest of the Constitution consist of provisions on how the country will be governed in the period of transition. Having a Constitution which consists of 300 pages is enough to deligitimise it. People do not have the time to sit down and read it. The Constitution should be streamlined.

Q: The Constituent Assembly will draft a Constitution that will be beneficial to the masses in this country. This Constitution will not deviate from the principles in the transitional Constitution agreed to at the multi-party negotiations. How does one reconcile the principles that cannot be deviated from with the flaws in the transitional Constitution?

Q: What mechanisms will be deployed in terms of fiscal issues? Should a particular region request, via the fiscal department from the National Assembly, for increased surcharges and taxes? The regions have not been informed of the mechanisms to be employed in this regard.

DO: The provision in the Constitution is that Parliament will decide within what limit a province may be able to impose a surcharge. A province may want to piggy-back on some taxation imposed by the national government, but Parliament will be able to say that a province may only do this to the extent of half a percent or one percent.

Q: Section (132) says "No person shall be qualified to become or remain a member of a provincial legislature unless he or she is qualified to become a member of the National Assembly". Could this be clarified?

DO: The qualifications for provincial legislature are the same as that for National Parliament. Section (42) deals with qualification for membership of the National Assembly and the disqualification apply to the Provincial Assembly. The section states: (1) No person shall become or remain a member of the National Assembly unless he or she is and remains qualified in terms of section 6 to vote in an election of the National Assembly or if he or she -

(a) at the time of the first election of the

National Assembly held under this Constitution is serving a sentence of imprisonment of more than twelve months without the option of a fine;

- (b) at any time after promulgation of this Constitution is convicted of an offence in the Republic, or outside the Republic if the conduct constituting such offence will have constituted an offence in the Republic, and for which he or she has been sentenced to imprisonment of more than 12 months without the option of a fine, unless he or she has received a pardon;
- (c) is a unrehabilitated insolvent;
- (d) is of unsound mind and has been so declared by a competent court; or
- (e) holds any office of profit under the Republic: Provided that the following persons shall be deemed not to hold an office of profit under the Republic for the purpose of this paragraph, namely -
 - (i) an Executive Deputy President or a Minister or Deputy Minister;
 - (ii) a person in receipt of a pension paid from public funds or from a pension fund aided by the public funds;
 - (iii) a justice of the peace or appraiser; or
 - (iv) a member of any council, board, committee, commission of enquiry or similar body established under law or a committee of the National Assembly who receives remuneration not in excess of an amount equal to his or her salary as a member of the National Assembly.

Q: It is important to clarify the re-incorporation of the TBVC-territories.

DO: The legal and constitutional mechanisms were discussed above. What happens between now and the elections:

1. The Transitional Executive Council has to ensure that the playing field is level and that elections are fair and free. One of the sub-councils need to deal with this.
2. The ANC made it clear to the NP that it needs to implement steps which will bring these people to their senses. For example, Bophutatswana's government relies for 70 percent of its revenue on the South African government. It will be necessary to apply sanctions.

It is easy to say that after April 27 a democratically elected government will do this. However, pressures have to be applied now, which is a political matter. On the side of NP we need to apply pressure.

It is necessary for us to mobilise as this is an issue on which we have not mobilised sufficiently. Unfortunately, there are many issues where this is the case and negotiations seem to have become a substitute for struggle. We need to bring the two together again.

Q: How does the right to succession function in terms of the Deputy-President, in the event of the death of the President. Which of the two will take over?

DO: Provision is made in section 86 for an Acting President during the time that a President is absent or temporarily incapacitated. Here the NP fought for the Deputy-Presidents to be appointed on an alternate basis, which the ANC objected. We have a provision in sub-section 2: In designating an acting President under sub-section 1, the President shall take into account the exigencies of government, and the spirit underlying the concept of Government of National Unity. The President is not required to appoint the Deputy-Presidents consecutively in order to perform functions during absences. Also if the President is permanently incapacitated, then the National Assembly will appoint the next President.

Q: When will the Constitution take effect?

DO: With regard to the working of parliament etc. the Constitution takes effect immediately after elections. The period up to elections can be called a pre-transition period, because it is during that period that the TEC will exist, but the governmental structures of today will continue and remain in existence and only disappear once elections have

taken place. The question of when the Constitution comes into effect was discussed during negotiations. No party that objects to elections should have the space to apply to court or to declare the processes unconstitutional. In the way that Buthelezi went to court on the issue of sufficient consensus. What areas of the Constitution should be legalised and brought into effect even before elections, have been under discussion. Or how it should be done to ensure that no one can challenge the steps that are being taken to get elections. Generally speaking the rest of the Constitution takes effect after elections.

Q: Is there not a need for a model Constitution and legislation for the provinces.

DO: The regime proposed that a draft Constitution be annexed to the Constitution. The view of the ANC was that this pre-empts the matter and it will encourage provinces to adopt Constitutions, when in fact the issue has not yet been decided. This is something that should be decided by a Constituent Assembly. If provinces are encouraged to adopt a Constitution now, we are pre-empting the work of the Constituent Assembly. The idea of a model Constitution can be a good idea if the issue is settled and where you want uniformity throughout the country, which is a good thing to have, rather than if regions adopt all kinds of different matters.

Model legislation has not been considered and this is a matter that should be examined and discussed.

Q: Will national government departments be smaller in the 20 areas where the national and provincial governments have concurrent powers?

DO: The process of rationalisation will have to determine this. If a lean administrations are created, it will be advantageous.

Q: Is the Constitution not a staying document that should not be over-amended?

DO: Whether the Constitution should be a staying document or not. It is not a good thing to be tied to a theoretical or constitutional rule. A bad Constitution should be discarded as soon as possible. There should be a political approach with regard to constitution-making and not be bound by theories that constitutions are meant to be ever-lasting. If we win a good Constitution which can be changed by the

people over the years through a process of amendments, to suit circumstances as we go along, it will be good. The interim Constitution is not designed to last for five years, and will be replaced once the Constitutional Assembly has adopted a new Constitution. The only element that will remain is the formula for the Government of National Unity and this will last five years.

Q: A Constitution should have a name of the function of a body, rather than a name of that body. For example, a Public Protector describes a function, rather than merely a name.

DO: One should avoid the kind of names in a Constitution which reflect current thinking and will not necessarily be useful in the future. These should be described in terms of function and leave names to the political process as we go along.

Q: Competing and over-riding powers between central and provincial government. Was these concepts created to appease the Freedom Alliance group. How are we going to compete while developing ?

DO: The issue of competing and over-riding powers does create problems in that it creates room for disputes. A simpler formula is needed in the new Constitution. The problem lies in that it creates concurrent powers for national and provincial government. In certain respects provinces will have over-riding power and in other respects the national government will have these, creating a situation of competing over-riding powers. It depends on the criteria whether the centre or the province will have over-riding powers.

Q: Section 143 states that for the purposes of setting up provincial administration, secretaries will be appointed by the TEC. This is the re-transitional phase, for the purposes of convening the Provincial Assembly after the elections. What are the terms of reference of getting the secretaries?

DO: The way in which provincial government has been dealt with, the demarcation of provinces and the various sections setting up provincial government and administration, is an attempt to create viable provincial government. On the one hand one will be suspicious because one will say that a Constituent Assembly must finally decide on these matters. On

the other hand, the question arises on what happens to the TBVC territories and the various home-lands. Does one simply abolish the structures? What happens to the administration, do they fit into a national pattern or into regions or provinces? Therefore, provincial governments should be developed as soon as possible, so as to ensure that as home-lands are dismantled, their administrations fit into provincial administrations, with the least inconvenience to all concerned.

Regarding the setting up of a commission, the secretary, and the provisions, the African National Congress believes that the issue of provincial government must be dealt with by the Constitutional Assembly as a matter of priority. All these things are designed to ensure that as soon as possible after elections, the necessary infrastructure is created for the provinces to operate effectively. The exact duties of the secretary have not been defined.

Q: The ANC has 14 regions. What will be the lines of accountability between these and the provincial structures.

DO: The Constitution creates accountability only in the sense that all the structures created are democratic, for instance all are elected by the people, and therefore may be changed by the people in subsequent elections. There are problems relating to parties when one works on the basis of a list system, which creates enormous powers to those within the party, who make decisions. The accountability of a member is to the party rather than to a constituency.

The question of accountability is problematic on many levels. From the point of view of those who want to build a sustainable democracy, we need to think in terms of accountability which is not only within the Constitution, but through the organisations of the people, the unions, civic organisations and other structures. In the absence of strong organisations of civil society and, for instance, trade unions, the problem of accountability will be fairly big.

Q: What happens on midnight after the elections?

DO: There is a break of ten days between the elections and the day that the National Assembly gets together to elect the President, because the electoral commission will have to certify that the elections

were fair and free and the National Assembly has to be convened, etc. The Transitional Executive Committee will remain in operation, the existing State President will be there, but the Constitution requires that he must act in consultation with the TEC. Once the new President has been appointed he assumes power.

With regard to provinces, where infrastructures have not been established and provincial government does not exist, the national government takes over these areas. They only get allocated to the provincial administrations once structures have been created.

Q: Promotions are currently taking place at a high level of the National Party government, in Tranksei, Ciskei and South Africa. What are the financial implications of this?

DO: A moratorium on promotions has been demanded. The provision is that all the appointments, promotions, which have taken place after a stipulated date have to be reviewed.

Q: What will happen to the current loans in the TBVC states?

DO: The ANC gave notice that it will not recognise any loans granted after these provisions have been adopted.

Q: How does the Constitution deal with the right to life? It does not mention the death penalty, euthanasia and abortion.

DO: The clause with the right to life, does not discuss these issues. On the question of abortion, the Womens League was satisfied with the clause. It felt that the issue of abortion had to be dealt with health and the right to privacy. The issue of abortion has not been resolved in the ANC. Euthanasia has not been discussed. The death penalty is an issue on which our movement has spoken out. We wanted a clause dealing with death penalty, the regime did not, and it was not possible to win such a clause in the negotiation process.

Q: By sanctioning Bophutatswana legitimises the homeland as a sovereign, independent state.

DO: The word 'sanctions' is inaccurate. We do not want to give status to Bop. However, it only exists

because it is sustained by the regime.

Q: If second generation rights are included in the Bill of Rights, and are protected in the Constitution it raises the question of credibility and legitimacy, because we cannot enforce it, as it is vertical application. It is a positive duty being placed on the state to enforce that right. How can we enforce it?

DO: A heated debate is taking place on whether social and economic rights should be in a Bill of Rights or not, even within the ANC. The reason given by those who feel these should not be in a Bill of Rights was that such rights cannot be enforced, they are not justiciable in the same way as other individual rights. My view is that while these are not enforceable in the same way: it is a question of enforceability with a definition of a human right. A definition of what a human right is should be contained in a Bill of Rights.

The question of enforceability can be dealt with in a number of ways: individual rights are individually justiciable in a court of law. But second and third generation rights can be enforced in different ways. In international human rights law today there is a recognition of the interdependence of these rights, and a holistic approach is necessary. One approach is embodied in the concept of human rights. Why should the right of freedom from hunger not be recognised in a Bill of Rights as a human right? How it can be enforced is a matter that needs to be dealt with. It is important not to be tied to traditional ways of looking at human rights.

BN: The question of the terms of reference of the TEC, that is of the Secretary to Parliament: the reason for Section 143 is that, for instance in the Eastern Cape region, there is no provincial government and a provincial legislature will have to be convened immediately after the elections. It was felt that this power should be given to the TEC, who will work out those terms of reference, without them needing to be in the Constitution.

On the question of accountability and the 14 African National Congress and 9 provincial regions, the movement has yet to speak on this issue. In my personal opinion, in areas like Natal, where there are three regions of the ANC, these will be consolidated into one region, probably with sub-regions. Northern Natal, Midlands and Southern Natal will form sub-

regions and the same will apply to Border. But this decision has not been taken by the structures of the organisation.

On the question of the death penalty, the technical committee came up with a proposal, that the present system should be retained, that is the moratorium should be retained until it is repealed by the Constituent Assembly. They also made a similar provision, in respect of abortion. In terms of the ANC's proposal it felt that the death penalty should be abolished immediately. As a compromise it was felt that the clause should remain as it is, namely the right to life, without mentioning abortion or the death penalty. It is easier for us going to parliament and passing an act with a simple majority, and not a two-thirds majority. In terms of the death penalty, we just pass an act abolishing the death penalty. It is easier if it is not contained in the Constitution.

Q: The issue of paying pensions to the Cabinet Ministers of the TBVC states and homelands needs to be addressed. They were earning high salaries and benefits in illegitimate structures. Do they deserve these?

DO: This question caused many problems to the ANC as the opposition parties were more concerned with this than any other question. The Constitution protects the pensions of people in the civil service. A Bill which is now before Parliament deals with pensions of parliamentarians of more than five years standing. It is not a very satisfactory provision, but could not be avoided. They do not deserve the pensions. The product of negotiations is one which includes the protection of pension benefits.

Q: Regarding a President elected by National Executive and Deputy Presidents from the two largest parties, is a provision made to the Deputy President that will act against the President?

DO: The Constitution does not prescribe what will happen if the Deputy Presidents defy or disagree with the President. The Deputy Presidents are required to fulfil the functions allocated to them by the President.

Q: What will happen if De Klerk and other parties are not happy with the result of the elections?

DO: The electoral commission is required after the election to certify that the elections were fair and free.

There is an elaborate provision in the Constitution, which enables the electoral commission to make a finding on the question of elections and all the parties are bound by the finding. It is not a decision that can be challenged in or taken to court. The decision is final.

Q: Is there any mechanism in terms of how the Financial and Fiscal Commission is comprised that will ensure that the needs of the provinces are effectively articulated?

DO: The Constitution contains a provision that deals with the Commission. Each Province will have one representative on the Commission and are thus well represented to ensure that the interests of the provinces are protected. The President will elect seven other members, including a Chair and Deputy Chair.

Q: It is important to the structures of the democratic movement to discuss what will happen after the elections.

DO: This was dealt with in terms of the Constitution. The above issue is a political question. It is important to be organised on this issue and maximum mobilisation of our people is required on every level to ensure that any attempt to frustrate the transition to democracy is defeated.

Q: What are the processes of the restoration of citizenship?

DO: A Restoration of Citizenship Act exists, which enables people who have been deprived of their citizenship to apply for citizenship to be restored to them. What is required is legislation by Parliament to restore citizenship. No process nor application is required. The draft legislation for the restoration of citizenship was dealt with during the course of negotiations and all that is required in terms of process is for the SA Government to table the Bill before Parliament and for Parliament to adopt a measure. Once this is done, the process is complete and on January 1 1994, citizenship will be automatically restored.

Q: In terms of provincial functions schedule 6, are any of these functions going to be attached to the Premier? Will the Premier run a department?

DO: The Premier is the Head of the Executive and will be involved in the allocation of portfolios and is entitled to allocate portfolios to him- or herself.

Q: What about the structure of the Judiciary.

DO: This matter does not fall under schedule 6, but falls within the competence of the National Parliament. The Constitution provides for a Supreme Court at a national level as well as at Provincial levels. To the extent that rationalisation will be required and new structures - Supreme Courts - are created, they will be part of one system of Judiciary in the country. The Constitutional Court is a new structure and in terms of the Constitution the seat of the Court is in Johannesburg. The seat of the Appeal Court will remain in Bloemfontein.

CHAPTER 3

PARLIAMENT AND ITS FUNCTIONS

Dave Dalling

The racial Parliament has been used as an instrument of oppression since Union in 1910 until the early 1990s. It has not been the instrument of democracy that it should have been, but an instrument to perpetuate the privilege of a small section of our community. Although it is much more exiting to talk about the future than it is to talk about the past, we must not forget that is has never been the intention, nor the policy of the ANC to destroy the institution of Parliament. The struggle of the people and the ANC has been to participate in Parliament as part of its right to democratic expression. Parliament should be the place for the democratic expression of the will of the people on whose behalf it governs.

In the future non-racial, non-sexist democracy, Parliament will be the instrument which should bring equal justice, equality of opportunity and improvement in the quality of life of the ordinary citizen. The people will elect the Members of Parliament on a list, who will then elect the President. The President, in terms of the Constitution, will appoint the Cabinet. From the ranks of the Members of Parliament and the President and the Cabinet will remain answerable and responsible to this elected forum, the Parliament.

The translation of policy into reality is brought about in two ways within the Parliament: the first is via the Budget. Each Government Department drafts a budget in consultation with its Minister, which is given to the Minister of Finance, who trims or expands the budgets in terms of the national policy of the government. Thus, the Budget is an expression of the policy of the Government, as it specifies, for instance how much will be spent on housing or defence.

A budget is about taxation, or how much money will be taken from the people and how it will be used on behalf of the citizens. The decisions are made by the Parliament of the Republic, which is guided by the Cabinet, which in turn is responsible to the Members.

In this way, via the Budget, the priorities of the day are made known.

Under the National Party, budget priorities were defence, the police force, the secret service and the tools of apartheid. Enormous sums were poured into the police force, which had to suppress the townships. Vast sums were put into secret funds, which were funded, in all sorts of nefarious ways, to prevent the struggle from succeeding. Thus, the policy of the Government was seen via the expenditure. In the future budgets the priorities will be different, for instance education, housing, primary health care, and most importantly, job creation. The new ANC budgets will be used, not as the tools of oppression, but as tools of upliftment. A government, and the Parliament which supports it, will be known by its budgets and by the changes these bring about in the country.

A second way that a Parliament affects the lives of ordinary people is via legislation, for instance the making of specific laws, the amendment of existing laws and the introduction of new laws. The task of a Parliament is passing legislation concerning virtually all fields of life, which binds the people and governs society. The National Party was told by the Opposition, that, in order for their laws to be respected, these should be worthy of respect. It is hoped that the Parliament, elected by the majority, will pass laws that will enjoy the respect and the obedience of the people.

The discriminatory budgets and laws have been the greatest failings of the South African Parliament. But this will change and the ANC will play the most important part in the legislative and the budgetary processes of the future. When the new ANC members enter Parliament, they will enter an institution that has existed for a long time with existing structures, staff and traditions. Although the professional staff is mainly white, in the past few months, Parliament has adopted a policy of affirmative action in its

employment practises. The politicians will be served by professional staff, who have been trained in the law, in parliamentary practise, in translation and languages, and in committee work. The professional staff will do their best to provide a smooth entry into the previously system. The staff is impartial, does not take part in the politics of the day, is not bound to any political party and is employed specifically by Parliament, not by the Government. It is therefore not answerable to the Executive or the Government in general, but only to Parliament and the parliamentarians. They will help all sides as best they can.

As the 1994 democratic Parliament meets for the first time, it is important to understand that the slate is clean. The traditions of the past and the rules of procedure are not binding on the new Parliament. No method of passing legislation will automatically be in place nor will the customs, which were binding on the Members of the past, be binding on the Members of the future. All these points will be part of the making of a new culture of a new democratic Parliament.

Much is going to change. Parliament is not working at the moment and the ANC has a Parliamentary Unit, which has been studying parliamentary procedure and its infrastructure. It has been working to provide the ANC with information, which will facilitate the ANC's entry into Parliament as a dominant force. Members of the Unit are Giles Mulholland, Sindiso Mfenyana, Jannie Momberg, Dave Dalling, Bulelani Ngcuka and Gertrude Fester. This unit is working on proposals on rules of procedure:

- * what will happen with ceremonial aspects and symbols, the flags and mace, the flying of flags;
- * what languages will be used in terms of the Constitution;
- * what translation and interpretation facilities should be provided;
- * what the implications are for the logistical work to be done, including the question of accomodation, housing and offices.

The work of the Parliamentary Unit has been guided by three principles in formulating proposals for ANC

policy.

- (1) Parliament should be transparent.
- (2) Parliament and parliamentarians should be accountable to the people.
- (3) Maximum participation in the affairs of Parliament; the passing of legislation and the budgetary process must be made available to all members.

All these threads are drawn together by Mr or Madam Speaker. (It is a misnomer as the Speaker never makes a speech). In medieval England, the Speaker was called the *pro locutor*, who, when the parliamentarians had made a decision, was given the task of taking the decision of the House of Commons to the King, to ask him to abide by the law. It was a dangerous job to speak for Parliament, because the Speaker could be beheaded by the King, if he did not approve of the decisions, as a way of getting back at Parliament. Because it was such a difficult and dangerous job, the Speaker, when he was elected, often refused to serve office. He therefore had to be dragged from his seat to the Chair. Even today in some parliaments, when the Speaker is nominated, they make a play of dragging the Speaker to the Chair, and he pretends to resist being elected Mr or Madam Speaker.

The role of the Speaker began to change during the reign of Charles I, who was beheaded when he clashed with Parliament. King Charles knocked on the door of Parliament and wanted it to deliver five Members to him to be tried for treason. The Speaker, Renthaw, barred the doors of Parliament and would not allow the King to enter the House of Commons. He said, " May it please Your Majesty, I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here". Which means he could not address the King unless the Parliament allowed him so to do. The Speaker survived, but the King did not.

In modern parliaments, the Speaker's role is different. He is the symbolic guardian of free speech and of free opinions in Parliament and is one of the pillars of true democracy. Although the Speaker is nominated and elected by the majority party in parliament, once he is appointed he has to become impartial in the exercise of his duties and the protector of minorities, not just

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majorities. As spokesperson for Parliament, the Speaker will:

- * preside over the debates of the Assembly;
- * enforce the observance of all the rules for preserving order in the proceedings;
- * put every question and declare the result of every vote.
- * sign a certificate saying that legislation has been properly passed and send it to the President for signature;
- * communicate all the resolutions of the Parliament to wherever they are directed;
- * convey all the acts to the President for signature;
- * convey thanks or condolences of Parliament to anybody to whom thanks or condolences are directed;
- * express the censure and reprimands of Parliament wherever they are directed;
- * disciplines members wherever necessary and has the power to punish outsiders who may attack the integrity of parliament.

Many years ago, a man called Hamilton-Russel, described the Senate, which had then been expanded by the National Party to destroy the Constitution in 1955, as a "house of ill-repute, peopled by gentlemen of easy virtue". He was expelled from Parliament for about a month by the Speaker for having attacked the integrity of Parliament. Alex Borrairie made a speech in Pietermaritzburg discussing a MP called Mills, saying, "He is seldom in Parliament, he enjoys much more lighting the fires of Fernwood than being in Parliament". Fernwood is the parliamentary club where 'braais' are held. This was regarded by the Speaker as being an attack on the integrity of Parliament and Borrairie was expelled for a week.

Parliament has some strange forms of language. For instance, one may not address a person directly by his name, but say, "The Honourable Member of Sandton" or "of Simonstown". The pedantic language has a purpose, because using an old style of language calms people down and ensures that a debate is

dignified. The rules and quiddities that have come through Parliament over the ages, are worth preserving in some ways, because they do make for a more calm or even a mature debate.

In short, Parliament is the representative of the House itself, of its powers, its proceedings and of its dignity. In recent SA history, the Speaker is also the person who heads the structures, the staff, and the administration of Parliament. It is in his hands to provide the Members with the necessary facilities they may require in their jobs. When anything does wrong in a Parliament it is nearly always not the fault of the Speaker, but when anything really goes wrong, the buck stops on the desk of the Speaker and it is he who has to put it right.

FUNCTIONS OF PARLIAMENT

Jannie Momberg

THE SPEAKER

It is believed that the Speaker originated in England in the 13th or 14th century, when the Members of the House of Commons began to choose one of their members to be Speaker, and from the term 'speaker' came the position of the person, spelled with a capital 'S', who today is regarded as the chairman of the House worldwide. Having been occupied by the British, Parliament in Cape Town, took over the British system almost word for word and act for act in 1872. The Speaker is regarded as the guardian of minorities. If a Speaker does not protect minorities, Parliament cannot function. If a Speaker is elected by the ANC with more than 240 Members, and he or she only looks after the ANC, Parliament will not function. It is easy to be the party in control, but the rights of the smaller parties have to be protected.

In the South African Parliament there have been Speakers, who have been revered by Members of the opposition, although they were previously hated. One example is Louis le Grange, who from a harsh Minister of Law and Order, whose decisions will reek in the nostrils of many people, was chosen to become Speaker. It did not seem possible that Dave Dalling, who as a member of the PFP often attacked him for what he did as Minister of Law and Order, ever could switch his reverence to le Grange.

The current Speaker is a man who was part of Department of Manpower. Initially it seemed like a strange appointment, because Dr van Rensburg, who is a Deputy Speaker, a very well equipped legal man, was expected to become Speaker. However, the post of Speaker is also a retirement field for Ministers. A Minister would love to become Speaker in his final years and look back at the control exerted, even over the President.

Every day the Speaker enters the house in a special procession. He is in the Bell Study for five minutes before the time, then the procession comes into the house, lead by the Sargent-at-Arms with the mace over his shoulder, shouting to the Members inside, "Mr Speaker". Then the Members rise, the Speaker walks in and bows to the most senior Minister of the House. Once the Speaker is out of the chamber and onto his chair, he has full control over the House. There are cells inside Parliament and the Speaker has the right to have people arrested, if they do not accept his ruling.

There are various ways in which the Speaker can exert his authority. Firstly, he can call a Member to order, by saying, "Order, you are using un-parliamentary language". Secondly, a Member can be expelled for a day. If the person speaking, or making an interjection breaks the rules of Parliament, the Speaker has the right to ask the Member to leave for the day. The Member must immediately leave the Chamber and the premises of Parliament.

The second-most serious punishment is naming a Member. For example, when Conservative Party Members called National Party Members traitors, which is un-parliamentary, a few were named. The Members then have to leave Parliament for as many days as suits the Speaker. This is more serious, because, if a Member is asked to leave the house, his or her salary is deducted for the number of days the Member is out of the house.

The House itself can ask for a Member to be suspended. Parliamentary terminology is precise, and when a Member is suspended "till the end of the session" it means that the suspension could be long, as the session ends five seconds before the State President opens the next session. Thus the Speaker controls both the inside and the outside of the house, no matter who is in the Chair. Issues are always referred back to the Speaker. It is not permissible to

make derogatory remarks about Members. For instance, a Member may not say another is knowingly lying, that he or she is a liar, nor make personal negative statements.

THE WHIP

The word "Whip", in its parliamentary sense, was borrowed in the 18th century from the fox-hunting vocabulary, where a "whipper-in" kept the hounds from straying from the pack. The Government and Opposition Whips have a similar task in regard to Members of Parliament to support their party and to see that they are present in all necessary occasions. The purpose of a Whip is to keep Members in line. Parliament is about opposition and government. If Parliament is close to a hung Parliament, ie. the government party does not have enough votes to have an absolute majority, then if the other parties stand together they could beat the government, the role of the Whips becomes crucial, because they have to see that there are always enough people in the House when a vote needs to be won.

This is achieved in various ways. A government has a special Whip, for "parings off". If a Member needs to be excused for a day, he or she speaks to the special Whip, who goes to the opposition and makes sure that there are as many Members of the opposition as there are of his party. To make sure that the Whip knows, there cannot be a snap election, as the party might find itself losing a vote. The Chief Whip, who in the current situation has been a person appointed by the National Party, is not a normal position in the rest of the Western system. Normally, the Chief Whip is the Whip of the governing party, who, in liaison with the officials of Parliament controls the debates.

Currently forms are sent out to all the parties to, for instance, state that the Constitution Bill will be discussed, asking how much time each party needs. Time is allocated via a formula and the governing party may say it needs, for example, ten times 15 minutes, eight times ten minutes and nine times four minutes. The debates are then regulated according to time so that the time allotted is not exceeded. In Hansard, before 1983, ministers and Members spoke for an unlimited time.

Every Thursday morning, the Whips meet to discuss the following week's work. Every Member of

Parliament has his or her own office and the Whip allocates these to their Members before the Parliamentary Session begins. Money is also allocated to give six Members a secretary for half a day and for equipment. The Members often come to the Chief Whip when they have issues to discuss, which they do not want to take to the Head of the Party, thus the role of the Chief Whips is much broader than that which is reported in the media.

THE FUNCTIONS OF PARLIAMENT

Pierre Cronje

Members of Parliament are the external link between Parliament and the people, as they were elected to represent the people. A lot of people get sucked into the clubbiness of Parliament, come down to Cape Town and go on the cocktail circuit. This was possibly alright when Parliament was serving the richest of the rich. I had 25 000 whites voters in my constituency, who elected me to Parliament. In that same constituency lived one million people, who were unenfranchised. If I had to depend solely on my white voters to keep me busy, I could have kept my first job going. The 25 000 living in wealthy farming areas did their own thing and one every five years voted for their radical MP and after that they did not want to see me, because they could look after themselves. Now and again someone wanted to bail his son out of the army and then they would come to see the MP.

The new situation will be different, because now an MP will look after about 50 000 voters. The majority is not wealthy and if we want to make sure that we cut Parliament off even further than the white Parliament was from the people, then Members must come to Cape Town and settle into the clubby atmosphere. We will then have a major task in meeting the 'crisis of expectations', by being on the ground. The other thing that will be different, is that MPs had a constituency to look after, in other words people could identify with a particular MP.

With proportional representation it will be different and we must devise new ways of servicing the public and ones particular voters. We will probably specialise so that in a region we will club together all

the resources that a MP should get together with those who will serve on the regional government and in the local governments. We will have to specialise, ie. a certain group of people will deal with education in a region and others will deal with development. This is an additional aspect of being an MP, to be where the people are and this is going to be more important in the future South Africa.

THE FUNCTIONS OF PARLIAMENT

Jan van Eck

In using an exclusive Parliament to promote the causes of people outside Parliament, the biggest danger that an ANC government can face is that it has a Whip, who insists that the Members sit on their benches all day, because the benches have to look full and it creates a good impression. Parliament will be different next year and therefore it will be important that the ANC is fully represented there and is able to perform. However Parliament should not replace the work that has been done outside it, but should complement it. Should this not be the case it serves no function. Anyone can decide beforehand how to vote. One can know a year before, but MPs still go into the vote believing it is exciting, because they do not know whether they will win by 200 or 300 votes. All MPs are not needed in Parliament, as their work can be more useful outside.

My role in Parliament has been an extra-parliamentary one and has proved the point that one must use an instrument for what it can achieve and not for what it can do for you.

I have been in politics for 22 years, of which 12 years were spent in the Provincial Council and the rest in Parliament. Since 1985, I tried to use these platforms to expose what was happening outside Parliament. During the State of Emergency, the Press was told it could publish nothing about the conflict. But Parliament has what is called 'Parliamentary Privilege', like the courts, which meant that I could go into the townships and see what was happening first-hand, ask the journalists to tell me what they knew and deliver the information in Parliament, which the newspapers could then publish. The result

was that every speech I made was published in full.

When I left the Progressive Federal Party in 1987, I went independent and remained so in Parliament until the Democratic Party was formed. The National Party was excited when I left the PFP, as anything that damaged the Opposition was seen as positive. The Nats thought I was going to attack the PFP, so when I asked for time to speak, the National Party Chief Whip asked me how much time I wanted. This had never happened to me in the PFP, because they told you how little time you had. I was allocated 12 minutes, which was much more than I had ever had before. I delivered my speech, of which I spent one minute on the PFP and during the rest I tore into the NP and the police. The next day the Chief Whip asked me if I wanted one or two minutes.

For the next years I always made two-minute speeches.

If a parliamentarian causes trouble in the House, in the present Parliament, such a Member can be disciplined. The NP tried to find a way of disciplining me, because I was doing all the things in Parliament that I should have done outside Parliament. The majority party in the present Parliament has full power to do to a colleague whatever they want to do to him. He can even be fired or have his salary taken away.

A difficult rule is 'breach of parliamentary privilege' which is proving that you have lied to Parliament, knowing full well that you have done so. When I made a speech in Parliament last year, where I said that I had information that V Botha had told his family members that he and his Government had killed over a 1000 activists, that De Klerk and the Cabinet knew about it and that they continued with that to this day, there was a deadly silence, but nothing happened. The next day the Nats moved that I must withdraw my comment and apologise, which I refused to do, as I believed it to be true. They then moved a motion, which was that I should be kicked out of Parliament, because I had offended the House, which means the majority of the House.

None of the Whips could find the rule, in terms of which they had taken this action. Only after days, when the debate came up, did they discover, that the NP had used a rule that was last used in the Westminster Parliament in 1882, which had since

been abolished by Westminster, but still existed in theory in South Africa. The counter-argument was that I had raised this as a fact, and was not slandering. The Nats countered that I had offended the majority of the House and that they were going to get rid of me. Mr Vlok claimed it did not matter whether what I had said was correct or incorrect. This is misuse of the Parliamentary majority.

Parliament is a very boring place, but it has a powerful function because it brings everyone close together. So when Parliament is democratically and properly constituted, it is an important institution, where the rough edges are rubbed off via physical contact between the MPs, thus moving people away from polarisation. In Parliament one can have an acrimonious debate with another MP and later go for a cup of tea together. Parliament has a public profile of conflict and confrontation between Members. Yet, at the same time behind the scenes, people can attempt to understand each other, which leads to problem-solving.

DISCUSSION

Q: Please elaborate on the structures of Parliament, for instance the library, and Hansard.

JM: Mr Hansard lived in the late 1700s, and used to sit in Parliament and write long-hand what the people in Parliament said. Once a week he used to produce a journal, which he sold to Members of Parliament, called Hansard. Over the years this has changed and today Hansard is a direct reflection of what happens in Parliament; a verbatim account recorded in a book. At the end of the week a paperback comes out with the speeches of Parliament. An MP may correct the grammar in his or her speeches, but the sense may not be changed.

The Hansard will be problematic with eleven official languages. One of the issues being looked at the moments is how to accommodate the language usages in the Parliament. Hansard is the record of Parliamentary proceedings, which is prepared by the professional Hansard staff and can be purchased by MPs and members of the public.

Parliament has an extensive library with almost one million books and under the Buildings of Parliament is a library, which contains a copy of every non-

fiction book that is imported into South Africa and a copy of every book published in the country. There is a library with research staff on every possible subject; for instance, environment, parliamentary practise, nature conservation, aspects of social practise and pre-natal and ante-natal care. Members of Parliament use the library extensively for research. The library staff will find books and even chapters of what an MP needs.

The library has a direct computer link with the University of the Orange Free State, which has a Department of Contemporary History, that runs a newspaper-clipping service and have a clipping of every political statement of every newspaper on every day.

Q: How does the Parliament ensure that the staff is nonpartisan?

PC: Traditionally the staff has been nonpartisan. As an example, when I joined the ANC I had been in Parliament for 12 years, working with the staff, who had serviced us as MPs all those years. The day I walked in as an ANC member, the staff seemed to be re-committing themselves to me. When I walked into the telephone-exchange the staffer literally jumped up and said, "If you want messages taken, please just tell us". Meanwhile she had been doing this for me for 12 years.

DD: There is a strict rule that no member of staff may become an office-bearer in a political party. This does not mean that they do not have political views and many are members of political parties in their private lives. A few white senior members of the staff have been ANC members for years.

Parliament over the years has been totally impartial. For instance, if an MP intends to move a motion, which will catch the NP by surprise, he or she goes to the legal section to ensure that the motion is properly worded and legally correct. The staff member will help and when the motion is introduced, the NP will have no inclining of what is about to happen. The total confidentiality of the work between an MP and the professional members of staff of Parliament remains in place.

Confidentiality is ensured, because if a staff member breaks it, he or she will be sacked. The new members of staff, from the ANC for example, will adopt the

same stance towards all Members, not just favour the people who are ANC.

There are between 400 and 450 staff in Parliament. The top structure of Parliament is trained to deal with special aspects, such as legal matters, dealing with the finalisation of legislation, and matters concerning the committee, library and translating staff. Then there are service people, who look after the affairs of Members of Parliament. The staff structure is large and complex.

JvE: Parliamentarians do not have enough assistance. For them to be able to perform maximally as MPs, with the least amount of time there, they need far more back-up staff, as they have in America, where every congressman and senator have staff. This system will specifically benefit large parties.

Q: In what way is the Speaker a protector of minorities?

JM: The protection by the Speaker of minorities is not written into the Constitution, it is just a tradition. It has happened over the years that certain Speakers have adhered to this. It is easy not to protect minorities, for instance allowing an interjection against the present minority of five. If the Speaker allows other MPs to go too far or cuts the minority short in the middle of a speech, this is almost victimisation. The Speaker can by his or her approach either look after the minorities or not.

JvE: The Speaker's job is to look after the MPs interest. For instance, if a minority MP goes to the NP Chief Whip, he knows he will not get impartial help. Therefore there was no-one in Parliament, who could give a minority party or individual a hearing. The Speaker has the role to listen and will try to sort out that official A, B, or C, will be fair to an MP. It is not guaranteed that the person as an individual will be fair. I assure you that Louis le Grange was not fair to Helen Suzman, but he was the fairest of them.

Q: A budget expresses the policy of the government. What is the role of the Opposition in the drafting the Budget.

DD: In the past the Opposition has played no role in drafting the budget. The process began with the Cabinet Ministers, through their departments, to the Joint Cabinet Committee, and from there with the

Minister of Finance and the President or Prime Minister sitting in, the Budget was fashioned. Which was then presented in dramatic form by the Minister of Finance in his Budget speech, where for the first time he reveals his proposals for the coming years.

This is why the Budget Debate was always very interesting, whereas, in Great Britain for instance, the Budget is kept secret and is revealed to the press only as it is being delivered by the Minister, so there is no input in the past historical sense in the Budget.

In the new South Africa, there should be far greater participation by all people in the fashioning of the Budget. The Economic Forum has been established, in terms of which the Minister of Finance has agreed to consult with all sectors, such as the trade unions and the business sectors in the fashioning of his Budget. Furthermore, for the first time in South Africa, there is a Transitional Government of National Unity, which is going to be a government in which more than one party will participate. The parties participating in the government will be party to the drafting of the Budget. Therefore, there will be greater participation in the public sector level and in the private sector, namely via the trade unions and business, and via the multi-party character of the Parliament of the new government.

Q: Can the Speaker clarify whether, when discussing minorities, he means minority parties or minorities.

JM: It means both. There were few people in the old system who were independent and needed protection. Such as the ANC- aligned group in Parliament, which comprises five independent MPs. The same applies to other small parties.

Q: What is the process of deciding the seniority of Ministers?

DD: There are portfolios that are important and, therefore, have seniority. In parliamentary terms, however, seniority of Ministers is guided by the length of time the person has served as a Minister. A Deputy Prime Minister jumps to the seniority list, whether or not the person was a Senior Minister, prior to the position. The seniority list of Ministers is governed by protocol and that is governed by the length of time the person has served.

In the present system, how did MPs collect mandates

for the kind of policies they pursued in Parliament?

DD: In the present system, the MP was elected at an election on behalf of a political party and stood on the policies of the political party of that election, which was the basic mandate. This is the weakness of the Westminster System, in that once an MP is elected, he or she is there for five years until the next election. There is no structured consultation, therefore a wise MP will consult with his constituents regularly. The candidate stands on the party's policies, and policies are decided at conferences and caucuses on a weekly basis and the MP promotes the policies of his or her party. The contact with the voting public is not high and this should be changed in the new society.

PC: The system in white politics is that people elect their Member of Parliament and leave them alone for five years. The people who elected him/her convey a sense on him that s/he knows what they want, and that they have faith in him/her to take the right decisions. But there is little formal input. If there is a democratic structure within the organisation of a political party, including having national and regional conferences, where resolutions are submitted for adoption as policy, then the party is able, on an ongoing basis, to take a public position on all the issues of policy from grass roots up.

White politics has had low accountability and the only accountable time is when a person stands for election again. If the candidate has not done his or her job, either the party does not elect the candidate or the people do not.

CHAPTER 4

THE FUTURE OF PARLIAMENT

Sindiso Mfenyana

The task of the Parliamentary Unit (PU) was to go into Parliament, look at what is there, look at the decisions which have been arrived at through the Interim Constitution, and look at whether the current Parliament, with all its structures will be able to accommodate all the issues which are raised in the new Constitution.

The PU was guided by the fact that Parliament is changing from a tricameral system to a two-chamber system; a House of Assembly and a House of Senate. The PU then examined the indications of these changes, which affect almost all the departments. For instance, questions examined included the legislative process; how Bills will be introduced, by what procedures it will pass in the Houses and how it will become law.

Another area involved the implications of having 11 official languages and whether given the present structure and facilities as well as the feasibility. If not, to ascertain what options, at least for the ANC, can be put forward which can then be tabled to the TEC, in order to meet the demands.

In terms of the staff, it is not merely a question of impartiality, because the staff is there to carry out the decisions of Parliament. They are in the same position as the civil service, who do not make policy. They are geared to see to it that decisions are implemented. They may not use their private political convictions to change or distort the decisions.

The same situation pertains in terms of the Parliamentary Staff. Once an MP receives documents, he or she goes to the Secretariat, some times referred to as the Table, the staff of which co-ordinated the activities of all the other departments. These people have to follow every document that is issued by Parliament, starting from the Constitution. The staff had a hot-line to every decision taken in Kempton Park, because once the decision has been taken, it becomes their job to ensure that they immediately put

in place the necessary machinery to ensure that the decision is implemented. It requires not just knowledge of the Constitution because they have to follow literally everything, all sessions of Parliament. To make sure that they know what has been decided, they have to prepare the various sessions, whether it is in the Chambers or committees. This was the type of work the PU looked at.

THE FUTURE OF PARLIAMENT

Department: Legislation and Procedures

Head	1
Deputy Head	2
Assistant Head	2
Senior Clerk/Translator	3
Clerk/Translator	6
Senior Typist	1

Section: Office of Clerk of Papers

Deputy Head	1
Senior Administrative Officer	1

Sub-section: Store

Senior Stores Officer	1
Senior Service Officer	2
Service Officer	8

Sub-section: Printing

Lithographic Operator	1
Senior Printing Assistant	1
Printing Assistant	2

Sub-section: Binding

Book-binder	1
Senior Binding Assistant	3
Binding Assistant	3

The PU is preparing proposals in relation to the areas mentioned above, putting them into a legally correct form, they way documents have to be presented in

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Parliament. And from there the document has to be checked in terms of content, spelling, etc. Another department looks into the questions of translation of the documents. If at the moment there are two languages, English and Afrikaans, for each document which is issued in one language, there has to be a team that makes sure that the translation is correct. Because there were only two languages they did not bother to really employ translators and interpreters. The new situation with many languages, and the implications in terms of translations, facilities in the chambers, the means of communication, etc. have to be put in place.

Staff who work with the legislation and procedures, are the people who deal with a glut of papers. There are several documents that have been issued when Parliament is in session. We have to have an agenda or an order paper. This has to be properly prepared and translated and presented in time (the minutes), which have to be produced, etc. This is one section.

The three sub-sections are Store, Printing and Binding.

Department: Hansard Translations

Editor	1
Deputy Editor	2
Assistant Editor	3
Senior Translator	4
Translator	7
Senior Typist	6

Department: Hansard Reporting

Editor	1
Deputy Editor	2
Assistant Editor	3
Senior Reporter	6
Reporter	10

Department: Committees

Head	1
Deputy Head	3
Assistant Head	3
Senior Committee Clerk	4
Committee Clerk	3
Senior Typist	1

Department: Library

Chief Librarian	1
Deputy Chief Librarian	2

Assistant Chief Librarian	3
Senior Librarian	5
Librarian	6
Library Assistant	3
Administrative Assistant	2
Typist	1
Principal Service Officer	1
Senior Service Officer	1
Service Officer	7
Cleaner	2

Section: Restoration Laboratory

Restorer	1
Senior Librarian	1
Assistant Restorer	2
Restoration Laboratory Assistant	3

Department: Parliamentary Liaison Services

Head: Liaison Services	1
Senior Liaison Officer	1
Liaison Officer	1
Liaison Assistant	2

Department: Computer & Technical Services

Head: Computer & Technical Services	1
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Section: Data Capturing

Senior Data System Adviser	1
Data System Adviser	1
Assistant Data System Adviser	1
Data Controller	1
Senior Data Typist	1
Data Typist	1

Section: Technical Services

Senior Technical Adviser	1
Electro Technician	1
Senior General Assistant	1
General Assistant	2

Department: Finance

Head	1
Deputy Head	1
Assistant Head	1
Senior Accountant	2
Accountant	2
Data Controller	1
Assistant Accountant	3
Administrative Assistant	6
Typist	3

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Department: Administration		Sub-section: Messenger Services	
Head	1	Chief Service Officer	1
Assistant Head	1	Assistant Chief Service Officer	4
Senior Administrative Officer	3	Principal Service Officer	11
Administrative Officer	4	Senior Service Officer	11
Administrative Assistant	7	Service Officer	40
Senior Typist	2	Household Services (Sessional posts)	
Typist	20	Service Officer	118
Data Typist	2	Cleaner	13
Stores Officer	2		
Section: Parliamentary Catering		<p>In the various areas the titles given do not always reflect the menial character of the jobs, for instance a Service Officer is a messenger. The above gives an idea of the size of the staff and where large numbers are cited this indicates how menial the job is. In the current Parliament virtually every position is either handled by white, and since the Tricameral Parliament, a few other peoples, such as coloured or indians staff. We have indicated to them that we have to ensure that not only Parliament in terms of MPs be representative of the people of this country, but we would like to see a situation where the staff is equally reflect the population of this country. The African National Congress' Parliamentary Unit will make concrete proposals as to how this can be handled.</p> <p>The question of preparing people to enter Parliament: the parliamentary staff is professional and has been willing to assist the Unit in terms of any questions. The Unit told the staff what it wanted to achieve and needed to know, including details about the staff, the kinds of jobs they did, offices and housing. The aim of the Unit was to present clear recommendations for the African National Congress to facilitate entry into Parliament after the elections and to categorise the kinds of decisions that needed to be taken for the African National Congress to be able to have all the necessary personnel in place. The secretary to Parliament, who can be called Director General of the parliamentary staff, envisaged, for instance, a need to have some of the African National Congress MPs undergo an induction or training in terms of parliamentary procedure. The Unit feels this might be too late and that training should have been given earlier, which would have entailed identifying likely MPs, who could have trained in advance, even before they were elected.</p>	
Assistant Head	1		
Restaurant Manager	3		
Chef Cuisine	1		
Control Steward	1		
Chief Chef	3		
Chief Steward	1		
Senior Chef	3		
Senior Steward	2		
Chef	6		
Steward	4		
Service Officer	2		
Kitchen Worker	6		
Parliamentary Catering (Sessional posts)			
Manageress	3		
Cashier	5		
Waitress	60		
Kitchen Worker	35		
Department: Household Services			
Head: Household Services	1		
Sergeant-at-Arms	2		
Control Administrative Officer	1		
Section: Security, Cleaning and Messenger Services			
Superintendent	1		
Sub-section: Security and Messenger Services			
Assistant Superintendent	2		
Security Service			
Senior Caretaker	6		
Caretaker	16		
Cleaning Service			
Foreman Cleaner	5		
Service Officer	2		
Cleaner	39		

THE PURPOSE OF THE PARLIAMENTARY UNIT

Giles Mulholland

The purpose of the Parliamentary Unit is to be able to be in a position to prepare the ANC for Parliament and also to ensure that Parliament is ready for the ANC. In terms of the legislative process, those who have familiarised themselves with the Constitution in detail, will realise that little is said about how Parliament will work. The only things clearly stated are that there will be two Houses, that both Houses must pass the legislation, with small differences regarding Finance Bills and ordinary Bills and the quorum required, but nothing about how.

What about the rules of the Parliament, which are set by Parliament itself? One can briefly look at what may happen in one House of Parliament: currently in South Africa a Bill is being prepared by the Minister of State for the relevant department. It is then placed or introduced into Parliament and is "read a first time", which officially informs everybody that the Bill has been put before them for their consideration. The Bill is immediately sent to a Committee, which examines the details of the Bill and might make minor amendments.

A Committee is generally a sub-set of the House, which contains about 30 people and the representation of the parties will be roughly equal to that of the House. The Committee will look through the details and will correct mistakes and have a few political arguments if that is practical, and then send the Bill back to the House for its consideration. The debate takes place in the House on the Bill, which is called the "second Bill Debate", where the MPs have a direct effect. This is merely one option of many.

In the Westminster system the Minister prepares the document, it is tabled, but before it is discussed in detail, the House has what it terms a 'second reading', which is where the principles of the Bill are discussed. This is where, if one is introducing a Bill to establish a new university, the discussion will involve whether a new university is needed or not. Following this debate, which will be voted upon, the Bill is sent to a Committee, where about 30 MPs would discuss it in detail. They will read every clause and check that the details of how to create the new university are correct. The Bill will then be passed

back to the House of Parliament for a "third reading", which is where the effect of the Bill is discussed. This is the final debate.

Next year there will be two Houses in South Africa, thus it has to be decided whether the Bill goes from the Assembly to the Senate and go through the procedures in each House or from the Senate to the Assembly. A further option is to run them in parallel, where the Bill goes through the Senate and the Assembly together. If one wants to push the Constitution to the limit, a Bill can be introduced in each House, referring it to a Joint Committee of both Houses, where the Bill is considered together. There will then be a joint sitting, where the Bill is debated together, with each house voting separately. The House of Assembly and the Senate become one body. It is within the Constitution to use this procedure. Thus rules are important.

There are currently 17 Committees in the South African Parliament. In future, although this has not been fully discussed, there can be many more, probably one Committee for each Ministerial portfolio. There will, for example, be a Committee on Education, which discusses all the Education Bills, etc.

There will also be common Committees on issues such as the rules, on arrangements and other internal matters, and a new one to South African parliamentarians: ethics. At present the Committees are closed, which means that the public cannot see what happens in a Committee. It is probable that in the future, much of the committee work will be in public. This has implications, because extra facilities will be needed. At the moment a committee room is small, with seating for 30 people. More space will be needed to accommodate the public. One must also be careful not to be too public and transparent. An example is what happened in the World Trade Centre. While public discussion is positive, the compromises and the negotiations are not as easy in public. Thus, Committees need to make certain decisions in a closed session to achieve consensus. One of the largest Bills that goes through Parliament each year is the Budget Bill. It is quite possible that the Bill, which affects the budgets of each department, will be referred to all the Committees within Parliament. Thus, there may be 27 Committees, matching the 27 Ministerial portfolios, sitting at one time, discussing various matters.

Two terms need to be clarified. An interpreter interprets the spoken word, whereas a translator translates the written word. In the Constitution, where language is referred to, public servants have to speak in whatever official language the person they are dealing with requests (except in Parliament). The Constitution determines that a Member of Parliament may address Parliament in whichever official language s/he chooses. This means that interpreters will be required. This will differ from translation after the person has spoken, as in the case of court interpreters. When a debate takes place in Parliament, simultaneous interpretation will be needed, so that a point of order can be raised immediately and not 20 minutes later.

With South Africa's 11 official languages, a grid of 110 translators will be needed to translate all the different languages so that everyone in the Chamber will be in a position to understand. Translators are not able to speak all day, which means that at least two people will be needed to handle each interpretation, raising the number of interpreters to 220. At a salary of R 50.000 this will cost R11 million per year for one House. With 27 Committees sitting at the same time, Parliament may end up with 6 000 interpreters, costing over R300 million per year, for a staff of 400 in Parliament.

In order to circumvent the situation, it is necessary to establish a language of communication, such as is used in the TEC and at Kempton Park. Even then several hundred interpreters will still be needed within Parliament, with an equivalent numbers of translators. Presently, a translator, straight out of university with a degree in English and Afrikaans, needs two to five years, before s/he is competent to do proper translations.

When the National Party enters Parliament, if eleven members are elected, it will have representatives from every possible language group, who will be using their own language. They will try to use all 11 languages. It is possible that a National Party MP will stand up on a point of order and claim that s/he cannot understand and demand an interpreter. Using this method, the National Party can stop Parliament working. Therefore, it does not come as a surprise that the National Party is making no effort to prepare for the new Parliament. One of the roles of the Unit is to identify areas that will hamper the functioning of Parliament. A lot of work needs to be done in

employing interpreters, providing technical facilities, such as the sound systems, microphones and sound-booths, and a large number of offices. All of this needs to be done during the next four months.

The above illustrates one area of responsibility for the Unit. Others include helping the MPs move to Cape Town. After an MP has been elected and it is confirmed, s/he will have two to three days to come to Cape Town to prepare for the first sitting of Parliament. This is where staff excellence is required. Although they will make the arrangements, the Unit has to make to ensure that, when the MPs arrive, they will know what to do.

DISCUSSION

Q: Concerning transparency in the budget procedure, an option is that the ministers of the 27 departments compile the draft estimates of expenditure and income, submit that to the Department of Finance, and the Minister of Finance will make a Budget speech in Parliament. Transparency is a problem because it is rare for Parliament to take the Budget back to the various departments to make amendments. After the departments have made their estimates, the ANC should be supplied with the Budgets as these will have been initiated by officials, with their own agendas. Ministers are often very busy and are inclined to endorse the draft legislation without much scrutiny. After a Minister has reviewed the Budget it should be sent to the ANC regions. This is important for transparency.

GM: A Committee in Parliament will receive a Bill from the House of Parliament. The Unit proposed that the meeting would be an open session and the public will be able to attend. The Committee will invite people to make representations.

Obvious persons to invite to a Budget meeting will be members of the Economic Forum and other interest groups. One of these will be the Minister or the Minister's assistant who will supply all the relevant technical details.

Written and verbal submission, from interested parties will be accepted by the Committee and people may even make verbal representations to the Committee. Following this, the Committee should then hold a few meetings in a closed session to

negotiate the details and make the necessary amendments. This can be termed "sufficient transparency", because everybody knows the information that has gone into the Committee and will know the result.

If committee members try to negotiate in public, people will be grand-standing and playing to the public and the best possible negotiations may not ensue.

Q: Parliament has 17 Committees at present, with a staff of over 440. Assuming this will be duplicated to the provinces, and as they are not civil servants, who will pay them?

DD: Parliament makes its own budget via the Speaker and the professional staff, who prepare the it a year in advance. When the next year's Budget is prepared, it takes into account that there will be 500 Members of Parliament, 400 in the Assembly and 100 in the Senate.

Regarding the question of regional Parliaments: the Constitution provides for a provisional provincial Secretary to be appointed by the Transitional Executive Council. The task of the Secretary is to set up the infrastructure and facilities and the employment of people to ensure that when regional Parliaments meet, these will have staff, buildings and facilities from which they can operate. These Parliaments will also be prepared for by the Parliamentary Unit, which will be dealing with provision for the regional councils as well. In the past, all the members of the provincial Parliaments, for instance of the provincial councils, were public servants.

Parliament is a special institution and the parliamentary staff like to see themselves, not as people under the Commission for Administration or Public Service, but as servants of Parliament and paid for by Parliament. The Government pays Budget amount into the Parliamentary account and Parliament pays the salaries of the staff. This practise will probably continue in the future.

GM: The Committees are made up of MPs only, so the staff are not involved in the 17 or 27 committees.

CHAPTER 5

SOCIO-ECONOMIC PROFILE OF DEMARCATED PROVINCES

Renosi Mokate

BACKGROUND TO THE DEMARCATION PROCESS AND CRITERIA USED IN ARRIVING AT THE REGIONS

On June 8, 1993, the Commission on the Demarcation and Delimitation of Regions officially sat to begin its work after having been given the task by the Negotiating Council to demarcate South Africa into various regions.

The mandate required the Commission to:

- (1) call for submissions from interested parties, individuals and the general public, as well as the multi-party negotiating participants;
- (2) hold hearings at various localities, where people were to apply to request hearings and essentially all the requests that came through were honoured.
- (3) examine international experiences pertaining to demarcation, without too much detail, due to time constraints. There were a number of members of the Commission who were part of the technical support team and who had some experience in this. The Commission took into account technical information that was provided to the Commission.

In addition to the submissions, hearings and international experiences, the Commission was provided with ten criteria to consider when conceptualising the regions. These are:

- 1 Historical boundaries
- 2 Administrative considerations
- 3 Rationalisation
- 4 Limiting financial cost

- 5 Minimise inconvenience
- 6 Minimise dislocation
- 7 Demographic considerations
- 8 Economic viability
- 9 Development potential
- 10 Cultural and language realities

Instead of dealing with the criteria one by one, these were grouped into four, to bring some order into how they were being approached.

GROUP 1: economic aspects, which included the issue of

- (i) economic functionality. Here the idea was that whatever regions are demarcated, different types of economic relationships exist within those regions, such as the way the labour, goods and services flow and the location of industry. It was important that regions were economically functional.
- (ii) Economic viability, relates to the extent to which a particular region is capable of providing employment and has a sufficient tax base to finance development.

The emphasis of the two categories was on economic functionality, because there was one train of thought that argued for making regions economically viable. Here the concern was that the region should have a sufficient and autonomous tax base. By

emphasising economic viability, problems of economic functionality will arise. To have regions with equal GDPs, the same national geographic output, the same number of industries and the same population, will necessitate cutting boundaries and interfering with the economic functionality of the regions. It will therefore jeopardise the economic viability that it is trying to attain.

- (iii) Social and physical infrastructure. The Commission looked at what types of physical infrastructures such roads, rail and other connections exist. Social infrastructure included health, social and educational facilities, water and sanitation. The Commission investigated how these were distributed across the different regions.
- (iv) Development potential. This meant looking at what exists and what kinds of challenges a particular region may be faced with as well as the implications this had for the region's development potential.

GROUP 2: institutional and administrative capacity, included the following considerations:

- (i) Structures and systems of governance. The Commission looked at what exists and what may potentially arise. There are many types of governance in the different regions that can potentially be rationalised and can form the structure for a future government.
- (ii) The management of existing infrastructure in each particular region and whether or not there was institutional and administrative infrastructure to manage development for the policy process or for service delivery.

When one looks at institutional administrative capacity, this is what determines how policies are translated into actual goods and services that a particular community needs.

GROUP 3: geographical coherence

There was much debate about the definition of the concept. An ardent geographer will want the topography of a particular region to

exhibit a particular uniformity or coherence. The Commission decided that geographical coherence should relate to rural/urban balance and to refer to how the inter-connections between the various levels of urban areas and localities relate to each other.

GROUP 4: socio-cultural realities had to be taken into account by the Commission. Under this was the question of

- (i) Dominant languages in the different regions: this was a difficult category to determine, as precise numbers were required. It proved to be quite a contentious category to apply.
- (ii) Sense of identity: this could be based on sport, the level of economic development, or a particular political culture that evolved in a region. The Commission had to try to balance these different senses of identity. Given South Africa's historical circumstances, it became clear that people of different races and groups had divergent concepts of what the sense of identity of the region was.
- (iii) Historical boundaries: the Commission tried to capture the aspects within the criteria concerning Magisterial Districts, provinces, etc.

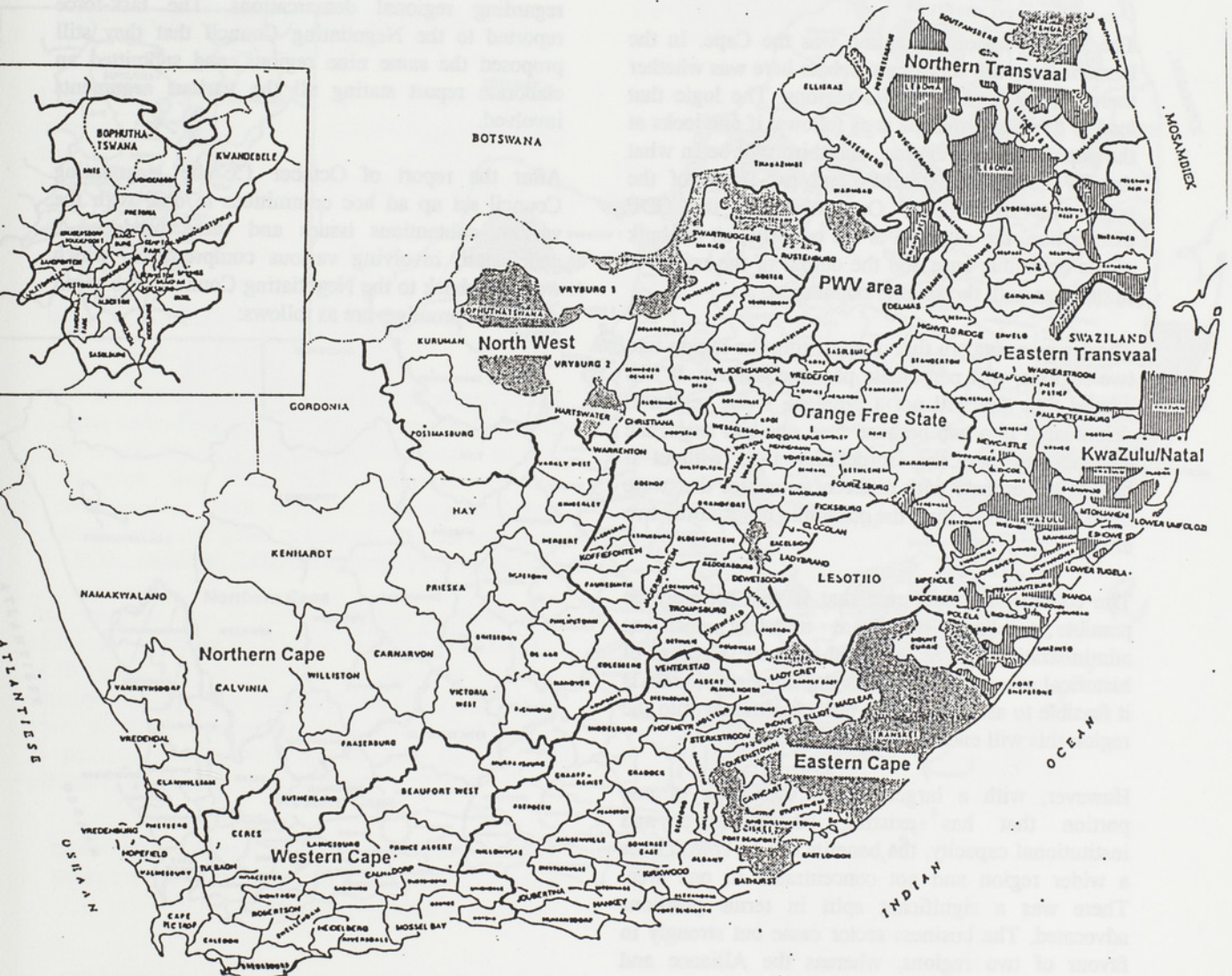
An issue that emerged was the land question. This refers to a situation where people perceived that they may be placed in a different province and that they may have land claims as a result of forced removals, which may be jeopardised. A typical example is in the Northern Cape, the Kuruman area, where people have been forcibly removed to Bophutatswana and are now back in Kuruman. The way that some of the boundaries have been proposed, Kuruman will be divided between two provinces, as has actually happened during negotiations. The people were concerned about what the implications will be regarding their claims to land if it is situated in a different province.

There are a number of ways in which the criteria can

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be applied. The Commission balanced the submissions received and looked objectively at

applying the criteria in order to emerge with reasonable boundaries.



REGIONS AS PROPOSED BY THE CDDR

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The outcome of the first exercise of the Commission ended on July 31. In several regions there was little controversy about whether or not and how the region should be demarcated, in terms of the submissions received or how the criteria were applied. The Northern Transvaal was not a major issue of contention, except for places such as Groblersdal, where there was some argument that it should belong to the Northern Transvaal.

The area of major contention was the Cape. In the Eastern Cape the significant debate here was whether there should be one or two regions. The logic that lead to one Eastern Cape is as follows; if one looks at the population distribution, one-third will be in what the DP calls the Midlands and two-thirds of the population lives there. On examining the GDP distribution, the situation is the opposite, as the bulk of the economic base and the output of the region is in the area with the smaller population.

There was a concern that demarcating the region into two regions, will perpetuate past inequalities. It was argued that this will not a problem, if the region is demarcated into two because then one can target the development into the Border/Kei area, without it having to compete with different priorities that were different resulting from the economic bases in the two areas.

The counter-argument was that it will probably be possible to have significant transfers, such as administrative and institutional capacity. Because of historical reasons that exist in the Border/Kei area, is it feasible to assume that by pumping money into the region this will encourage development.

However, with a larger region consisting of one portion that has existing administrative and institutional capacity, the benefits can be spread over a wider region and not concentrated in one area. There was a significant split in terms positions advocated. The business sector came out strongly in favour of two regions, whereas the Alliance and others favoured a single region.

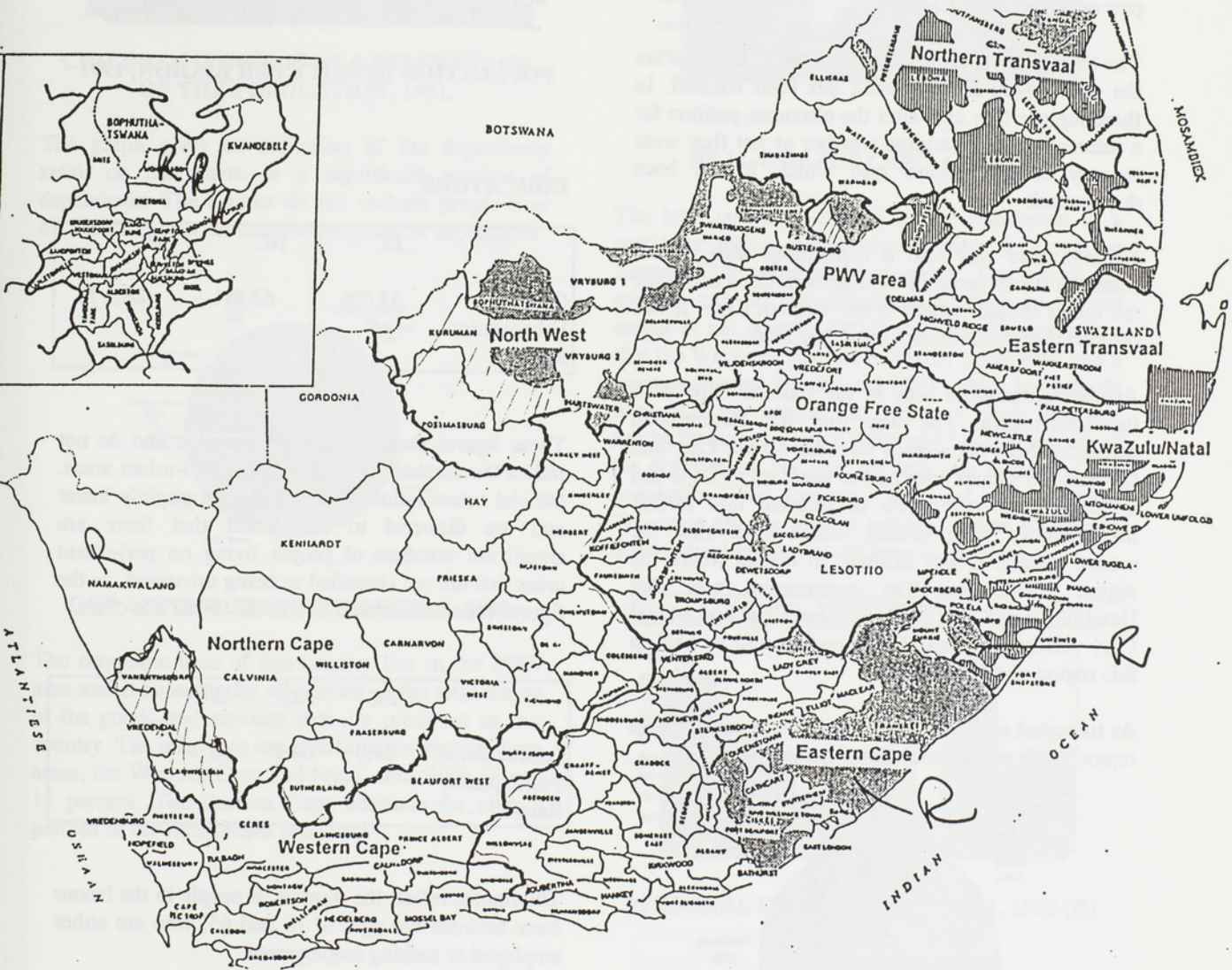
Another contentious issue was whether the Western Cape should be two regions or one. The Commission was split on the Northern Cape, with eight people felt this region should exist, while seven felt that the region should not exist for reasons of economic viability. For instance, the population itself, when

related to the question of the number of seats, did not make sense. The Northern Cape is an enormous area and it is not potentially economically viable.

Subsequent to the report on the 31st, the Negotiating Council (NC) sent the Commission back to do some further work. The Negotiating Council nominated the chairpersons of the Commission and asked them to set up a task-force to review further submissions, regarding regional demarcations. The task-force reported to the Negotiating Council that they still proposed the same nine regions, and submitted an elaborate report stating all the various arguments involved.

After the report of October 15, the Negotiating Council set up ad hoc committees to deal with the various contentious issues and these produced a conclusion, involving various compromises, which were sent back to the Negotiating Council. The result of the compromises are as follows:

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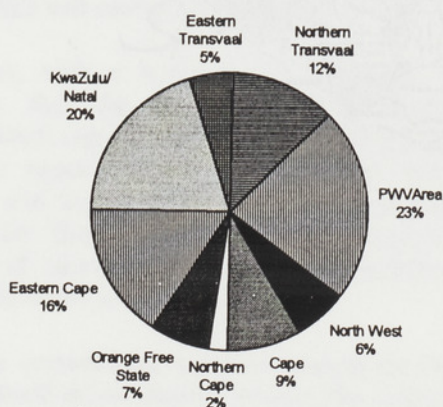
Kwandebele is now placed in the Eastern Transvaal. The Moratella area, which was a part of Bophutatswana is now part of the North West, including the Magisterial District of Brits. In addition, Postmasburg and Kuruman, in the North West, have been placed in the Northern Cape. Clanwilliam, Vredendal and Vanrhynsdorp are now part of the Western Cape.

The Magisterial Districts that have an 'R' on them are the ones where an agreement has been reached. In these regions they can, after the elections, petition for a referendum to determine whether or not they want to stay in the region into which it has been demarcated.

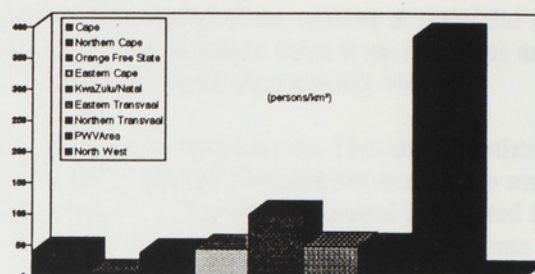
Namaqualand was also a contentious area, where some felt it will better in the Northern Cape and some felt that it should remain in the Western Cape. It was decided that a referendum should be held.

Another contentious area in the Eastern Cape is in the Umzimkulu. The way that the Commission demarcated the boundaries was that Mount Cary and Umzimkulu should form part of the Eastern Cape and a dotted line was drawn to indicate that further investigations were needed, where even after the second session it was difficult to decide where the region should go. The compromise was that Umzimkulu will stay in the Eastern Cape and Mount Cary will be in Natal. A referendum will be held in this region after the elections.

As indicated earlier it was impossible to emerge with regions with equal population figures.



POPULATION DISTRIBUTION PER REGION, 1991



POPULATION DENSITY PER REGION, 1991

INDICATORS

	EC	NC	WC
Official Urbanisation Rates	35.0%	65.8%	86.1 %

These figures show official urbanisation and do not reflect the numbers of people in the peri-urban areas. Official urbanisation figures come out slightly lower and are distorted to the extent that there are significant numbers of people living on peri-urban areas that are not classified as being urbanised, as the figures reflect those who live in the towns and cities.

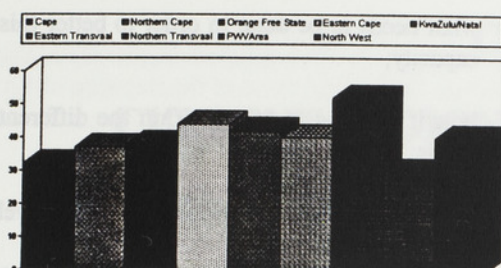
	EC	NC	WC
Labour Force Participation Rates	39.9	64.5	63.4

The figures reflect the number of people in the labour force between the ages of 16 and 65, who are either employed or seeking employment.

Economic Sectors	Manufact. Commerce Finance	Mining Agric. Services	Manfact. Finance Services
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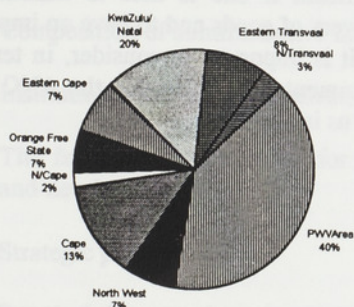
The major economic sectors of the regions.

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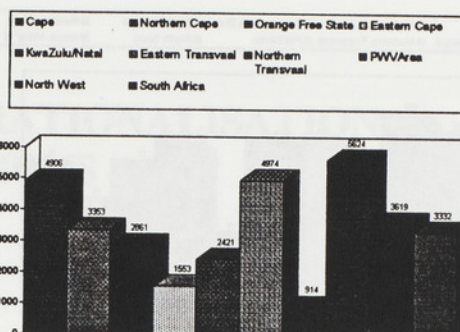
CHILDREN UNDER 15 AS A PERCENTAGE OF THE POPULATION, 1991.

The graph gives an indication of the dependency ratio, or that there is a significant number of dependents. The figures do not include people over 65, which is another component group of dependents.



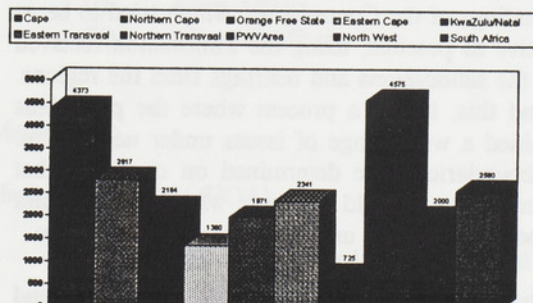
GGP DISTRIBUTION PER REGION, 1988

The economic base of this country lies in the PWV area and it accounts for 40 percent of the total output of the goods and services that are produced in this country. The other two areas with major metropolitan areas, the Western Cape and Natal, contribute 13 and 14 percent. The Eastern Cape accounts for only 7 percent of the total output produced.



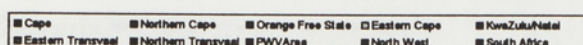
REAL GGP PER CAPITA, 1988 (R)

The total output is divided by the population in a particular region, which gives a better sense of the impact of the value of the economy. The figures are average and do not reflect the actual amount and output is not equally distributed. The figures reflect that the Western Cape has a smaller population and a strong economy, whereas the PWV which has a fairly high GGP per capita. The Northern Cape does not fair badly in terms of the GGP, and has two percent of the distribution, but also has only two percent of the population. The Eastern Cape and the Northern Transvaal are the poorest regions, where significant development problems will have to be faced.

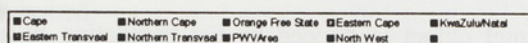


PERSONAL INCOME PER CAPITA, 1985 (R)

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PERSONAL INCOME/GCP, 1985 (%)



**GROWTH IN URBANISATION,
1985-1991 (%)**

The regions that have been demarcated were based on the findings of the Commission, which tried to be as objective as possible, using the information received from the submissions and hearings from the regions. Beyond this, it was a process where the politicians examined a wide range of issues under negotiation. The boundaries were determined on condition that referenda can be held in areas where a significant number of people are unhappy with the demarcation.

It is necessary to recognise that inequalities exist and to understand the implications for the challenges for development. The Eastern Cape, for example, poses significant challenges. Improvement to infrastructure, access to water and sanitation and the road network will be very difficult. This was one of the regions where the neglect and the impact of apartheid is stark which is why the argument was made that one cannot demarcate this region on its own and leave it with all the development problems. Furthermore it is necessary to examine:

1. the extent to which institutional and administrative capacity exists;

2. what needs to be done in order to better this capacity;
3. how it is going to relate within the different levels;
4. where the national, regional and local level will fit;
5. what the level of local capacity is;
6. how to strategically intervene in order to maximise and optimise the very limited resources there, even just in terms of delivery.

Even with billions of Rands to intervene, this only becomes significant if one is able to translate the funds into delivery of goods and to have an impact on development. It is important to consider, in terms of regional government, what it is that the ANC wants them to do for us in the future.

CHAPTER 6

CURRENT REGIONS: THE RATIONALISATION OF INSTITUTIONS

Job Mokgoro

The areas to be discussed, in reference to the Eastern and Western Cape, are:

1. Central government: legislative, executive, judicial and administrative institutions
2. Provincial administrations
3. Composition of administrative institutions
4. Institutional and administrative capacity
5. The framework of capacity for governance and development
6. Strategic perspectives
7. Practical things to do and to consider.

- All Bills have to be accompanied by a certificate from SP
- 'Own Affairs' Bill can be dealt with by relevant House
- General Affairs Bill has to be dealt with by all three Houses
- SP signs all Bills into law
- 1.2 Parliament
 - Tricameralism unique to SA
 - Each House elected on a separate voters' role
 - Powers of each House divided on two levels:
 - (i) Own Affairs
 - (ii) General Affairs

OVERVIEW OF THE CURRENT SITUATION

CENTRAL GOVERNMENT:

Legislative, Executive, Judicial and Administrative Institutions

1. Legislature
 - 1.1 State President (SP)
 - Legislative power vested in SP and Parliament
 - Legislature makes laws for the Republic of South Africa
 - SP has Legislative and Executive powers
 - SP elected collegially by MPs
 - SP's term same as that of the Parliament

Membership

House of Assembly (HOA):

- 178 members, 166 elected; four appointed by SP; eight chosen by elected members on the basis of proportional representation of each party represented in the House.
- Division of seats per province:

Cape	56
Natal	20
Tvl	76
OFS	14

House of Representatives (HOR):

- 85 members, 80 elected; two appointed by

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SP; three elected by proportional representation of each party in the House.

- Division of seats per province:

Cape	60
Natal	5
Tvl	10
OFS	5

House of Delegates (HOD):

- 45 members, 40 elected; 2 nominated by SP; three individually elected by proportional representation of each party in the House.

- Division of seats per province

Cape	3
Natal	29
Tvl	8
No representation in OFS	

Functions of Parliament:

- Most important: to make laws for the RSA
- Others:

Controls actions of the Executive

- * Cabinet members are Mps
- * Parliamentary Standing Committee on Public Accounts (has power to summon ministers and senior civil servants)
- * Extent of Parliamentary control limited (strict party caucus system of controls)

2. The Executive

2.1 The State President

- executive powers vested in SP
- is Head of Government and of the state of SA
- Commander-in-Chief of the SADF

In addition to his legislative functions, the SP is also appointed as Head of the State of the Republic of SA. As such, the SP is charged with executive powers which include the following:

- * administer any State Department not entrusted to a Minister;
- * appoint unspecific numbers of ministers to administer any State Department, or to perform other functions, and to serve as members of the Cabinet or of the three Ministers' Councils;
- * designate any member of a Ministers' Council as member of the Cabinet;
- * designate a Minister as Chairman of a Ministers' Council;
- * remove any Minister or Deputy Minister from office;
- * appoint Acting Ministers;
- * appoint an unspecified number of Deputy Ministers;
- * appoint or remove from office "persons in the service of the Republic...", unless the function is delegated;
- * dissolve any House of Parliament, under certain conditions;
- * summon a House to deal with an Own Affair, while Parliament is not in session; and
- * ceremonial functions as Head of State.

2.2 The Cabinet

The Cabinet consists of:

- * the State President as Chairman;
- * an unspecified number of Ministers appointed by the State President to administer State departments for General Affairs;

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- * any Minister appointed to perform functions other than the administration of State departments, and designated as member of the Cabinet;
- * any member of a Ministers' Council designate as member of the Cabinet by the State President.

The broad functions of the Cabinet relate to:

- * linking the executive institutions with the Legislature - preparing matters for consideration by Parliament;
- * directing the activities of the executive institutions in terms of the legislation and other directives of the Legislature, in order to ensure that public resources are provided to achieve the objectives of the legislation/directives;
- * linking with interest and pressure groups; and
- * controlling the activities of the administrative executive institutions.

A number of the Cabinet Committees may be established to examine matters from the perspective of the Cabinet.

2.3 The Ministers' Councils

There is a Ministers' Council for each of the three Houses, consisting of:

- * a Chairman, appointed by the SP from the ranks of the relevant Ministers' Council;
- * an unspecified number of Ministers appointed to administer State departments for Own Affairs;
- * any Minister from the relevant population group appointed to perform functions other than administration of departments;
- * any Deputy Minister appointed to perform powers, duties and functions on behalf of any Minister; and

- * any Minister of the Cabinet, from the relevant population group, who has been co-opted for a definite period or for a particular function.

The Ministers' Councils are responsible for effective and efficient government relating to the Own Affairs of the three population groups. Each Ministers' Council has its own administration.

3. The Administrative Executive

State administration is entrusted to political office-bearers, but carried out by State Departments and parastatal institutions. This section, particularly the State Departments, is the essence of research. The section deals with the structure of each institution, as well as its aims and main functions.

3.1 State Departments

Due to the present functioning of the State, the State Departments are dealt with in terms of General and Own Affairs.

Number of State departments:		29
(General Affairs)		
Own Affairs:	HOA	5
	HOD	4
	HOR	4

It is important to understand the kinds of government structures that exist, in terms of future restructuring. The House of Assembly has a division of seats per province (see point 1.2) This is particularly important from a fiscal point of view, as restructuring begins, because these functionaries will impact quite severely on the fiscus, which the tax payer will have to pay for. In the Tricameral system there is almost a billion Rands of pension benefits that have to be payed out by April 28, 1994. Serious note needs to be taken of this.

Despite apartheid, the existence of the institutions and the personnel demonstrates an existence of capacity, although it is limited, because their functions are limited.

The public sector comprises the above institutions, including the Civil Services, Central Government, Provincial Administrations, TBVC self-governing

territories, parastatals and local authorities. The public sector employs about 1.8 million people and the TVBC-States about 200 000. The Civil Services have grown in the self-governing territories. This is interesting if one considers that, this is where there has been exposure of maladministration and corruption. In the four major self-governing territories, civil servants' fingers have been found in the till, for example, in Lebowa as well as Kwandebele. Corruption is rampant throughout the bureaucracies, the Tricameral system, self-governing territories and the TVBCs.

In Central Government as well as in Provincial Administration, of the civil servants employed, blacks constitute over 50 percent, and if the bantustans are added, they constitute about 65 percent. One has to bear in mind that most of them will fall into this category and this is important from a restructuring point of view. We may be looking forward to employing those people who have been trained by the various apartheid institutions. One has to be careful of such optimism.

In the self-governing territories, an important point to note is the size of the bureaucracy in the education sector. The problem about this is that there is concern that the bureaucracy is bloated. At the same time we keep hearing of poor pupil to teacher ratios, which needs to be taken into consideration when restructuring.

Another area where many civil servants exist in the category of General Assistance.

People from outside the country get a fright, when they hear there are 13 civil services in the country and two million public functionaries within the public sector. There are 50 different pension fund arrangements within the country in the public sector. A number of these pensions funds have serious deficit problems.

When restructuring begins, various Provincial Governments will be inheriting liabilities as well as assets. For instance, in the Eastern Cape, the Provincial Government will inherit a substantial deficit problems coming from the Transkei and the Ciskei.

The interesting feature of the Ciskei is that it is more than a 100 percent funded. The explanation seems to

be (this is speculation) that when central transfers reach the bantustans, these funds are utilised for beefing up the pension fund. So, instead of using the money for social services, the civil servants pocket it. At the time when the pension funds were emancipated from government control, the level of funding was 120 percent. Once the calculations of the accrued benefits up to this point were made, the level of funding was 102 percent. Compared to the SA government service pension fund, the level of funding is 51 to 54 percent.

The provincial governments will inherit billions and the Exchequer in other words, the tax payer, will have to pay, through increased taxation, etc. There are agreements to have some monies flowing from the Exchequer into the pension funds.

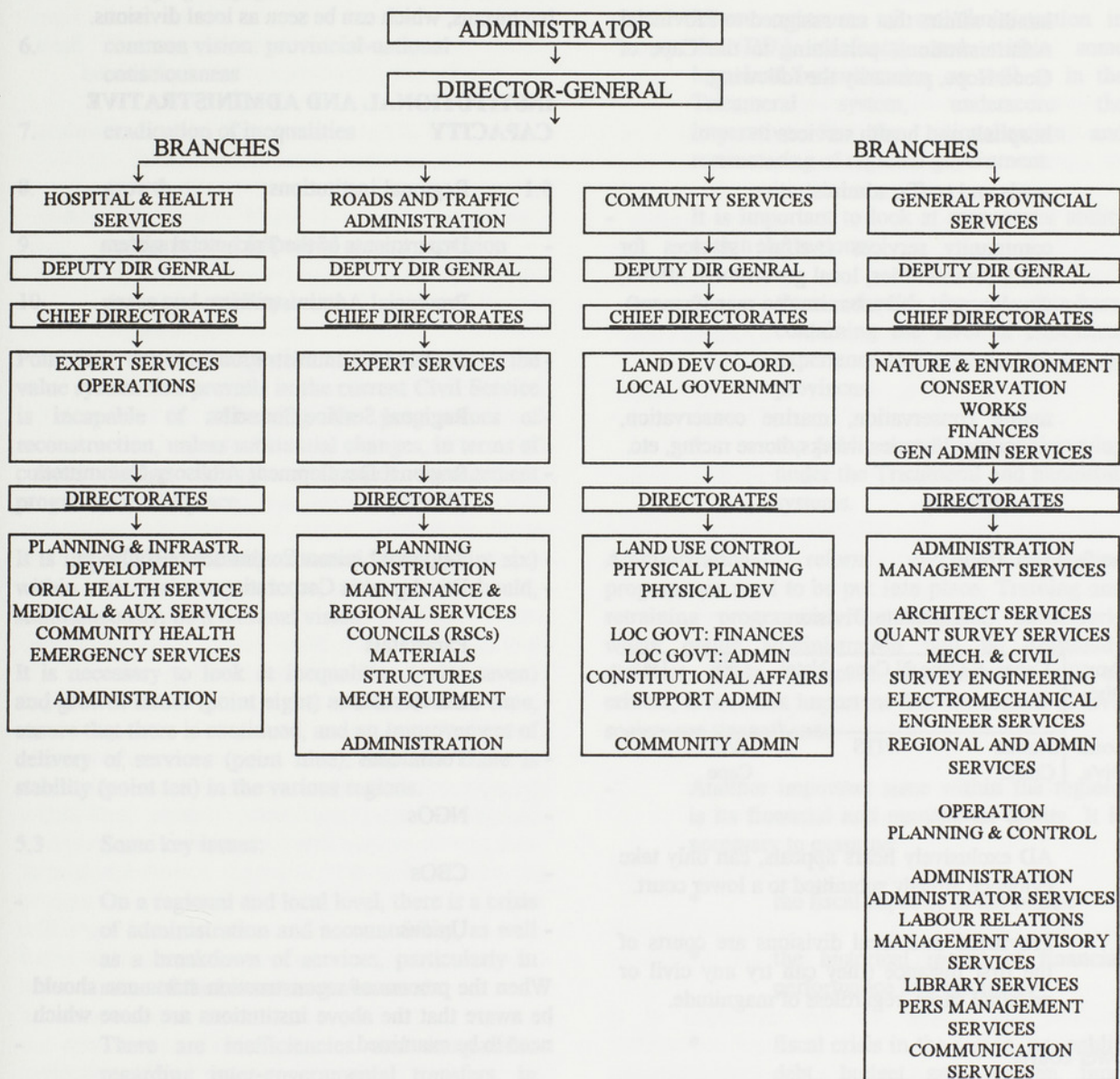
3.2 Provincial administrations

A historical over-view of second-tier government in SA:

In 1910 the separate autonomous states were formed into a union, and the previous states became provinces which had a measure of autonomy, that was removed in 1986. The present situation of the provincial administration is an extension of Central Government, which deals only with hospital and health services, roads and traffic administration, community services and general provincial services. From a reconstruction point of view, these are the levels of expertise in terms of the functions of the provinces. Many of the functions, at local and provincial level, are performed by Central Government Departments, that act on behalf of Central Government.

Provincial Administrations

3.3 Cape of Good Hope



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3.4 Aims and functions:

The aim and functions of the Provincial Administration of the Cape of Good Hope are to:

handle affairs that are assigned to Provincial Administrations, pertaining to the Cape of Good Hope, primarily the following:

- hospitals and health services
- roads and traffic administration
- community services (welfare services for black communities, local government affairs, development and urbanization management),

and

- nature conservation, marine conservation, museums, libraries, works, horse racing, etc.

4. The Judiciary

The Supreme Court:

	Appellate Division ↓					
Prov. Div's.	Cape	E.Cape	N.Cape	Natal	OFS	Tvl
Local Div's.	Durban Coast.	WTTS			S/E Cape	

- AD exclusively hears appeals, can only take evidence already submitted to a lower court.
- Provincial and local divisions are courts of the first instance (they can try any civil or criminal cases, regardless of magnitude).

Lower courts:

Magistrate' courts:

- Divided geographically, one court in each magisterial district.

From a reconstruction point of view, some points are relevant to the ANC. For instance, in the Eastern Cape, in the early 1970s, a Supreme Court was built

in Grahamstown, which was intended to service the entire area. When restructuring, it should be decided whether or not this facility should serve the entire Eastern Cape, or if other structures should be created. At the same time, there are Supreme Courts in the bantustans, which can be seen as local divisions.

INSTITUTIONAL AND ADMINISTRATIVE CAPACITY

5.1 Regional institutions:

- Departments of the Tricameral system
- Provincial Administration
- Bantustan Administration
- Regional Service Councils
- Regional Development Advisory Committees (RDAC)
- Regional Liaison Committees (RLC)
- Development Corporations
- Parastatals
- Universities
- Technicons
- NGOs
- CBOs
- Unions

When the process of reconstruction starts one should be aware that the above institutions are those which need to be examined.

5.2 Institutional restructuring/ transformation/ rationalisation/ reform

In this process, the ANC will be looking at:

1. duplication and proliferation
2. re-incorporation of bantustans

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- | | |
|---|---|
| <ul style="list-style-type: none"> 3. integration of structures 4. culture change 5. changing management 6. common vision: provincial-national consciousness 7. eradication of inequalities 8. growth 9. continued and improved service provision 10. peace and stability | <ul style="list-style-type: none"> revenue authority. Something will have to be done about this, because, with the devolution that a new dispensation will be looking at, it may end up being an empty devolution. - Recent exposures of maladministration in the DDA (defunct) and within some homeland bureaucracies, as well as in the Tricameral system, underscore the imperative for the rationalisation and restructuring of regional government. - It is important to look at managerial ability within the regions: <ul style="list-style-type: none"> * there should be a data-base, containing the level of education, experience and expertise within the provinces * the public sector personnel serving under the Tricameral and bantustan systems. |
|---|---|

Point four, culture change, is a critical element as the value system that prevails in the current Civil Service is incapable of addressing the programmes of reconstruction, unless substantial changes, in terms of culture change, through a changed management programme, take place.

It is important to identify common vision (point six) within the various provinces, although it should, simultaneously, be a national vision.

It is necessary to look at inequalities (point seven) and growth issues (point eight) and at the same time, ensure that there is continued, and an improvement of delivery of services (point nine), and that there is stability (point ten) in the various regions.

5.3 Some key issues:

- On a regional and local level, there is a crisis of administration and accountability, as well as a breakdown of services, particularly in some of the bantustan governments.
- There are inefficiencies and inequalities regarding inter-governmental transfers, in particular with the balance or imbalance between authorities or tiers of governments where these are allowed to have a tax system imposed as well as the expenditure responsibilities that central government gives them.

The imbalance is clear as there is a greater expenditure responsibility than there is

Administrational reform and transformation programmes need to be put into place. Training and retraining programmes are essential, particularly where public administration will be drastically different, where interactive administration will be critical, it becomes important that the organs of civil society are strengthened.

- Another important issue within the regions is its financial and managerial ability. It is necessary to examine:
 - * the fiscal capacity of the region
 - * the historical record of financial performance and discipline
 - * fiscal crisis in the region, eg. public debt, budget and pension fund deficits, and
 - * the financial management reforms required.
- A key issue is the extent to which the region already operates as a region, from a managerial and an administrative point of view, which involves:

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* the existence of Tricameral, bantustan, provincial administration, other regional structures, development corporations and local government

* administrative systems and their state of development

* extent of centralisation or decentralisation, and

* training facilities and opportunities

6. Eastern Cape

There is excessive fragmentation in the Eastern Cape.

- The region is divided into the Cape Province, Ciskei and Transkei.

- The points around which economic activity takes place are

* PE

* Uitenhage

* the Graaf-Reinet/Craddock, Middleburg triangle

* Aliwal North

* Queenstown

* East London/King Williams Town, and

* Umtata

6.1 Cape Province

- PE is the headquarters of the Cape Midlands and is the regional headquarters of Telkom, SA Post Office Ltd.

- All departments serving in the region have their headquarters in PE, except The Department of Water Affairs, with its headquarters in Craddock.

- The institutions governing education are all

based in PE.

- There are three universities: Rhodes, UPE and Vista.

- All major financial institutions have headquarters in PE with some of them extending their activities to the Transkei.

- Seat of Eastern Cape Provincial Division in Grahamstown, local division in PE.

- There are six RSCs: Algoa, Kamdebos, Midlands, Stormberg, Drakensberg and Amatola. Three are near the Ciskei and Transkei.

Given the administrative capacity, perhaps PE should be the capital of the Province.

6.2 Ciskei

- Has 18 government departments.

- Bisho houses administrative, legislative and executive institutions and also has an airport.

- Has the University of Fort Hare at Alice.

- Has a poorly developed local government.

Bisho already serves as the 'capital', although King Williams Town has been suggested as a potential capital, particularly as compared to other areas it is more centrally situated.

6.3 Transkei

- Has 20 government departments.

- Umatata is the 'capital' of Transkei.

- Has legislative, judicial and executive institutions.

- Has a university.

- Local government under-developed.

- Industrial triangle from Butterworth to Dimbaza and East London with well developed infrastructure, eg. roads, energy,

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communications, harbour and airport.

Umtata could be the capital.

6.5 Rationalisation of existing structures

- Reincorporation of the Transkei and Ciskei will necessitate an integration of all regional and local structures in the Cape Midlands, Ciskei and Transkei.
- This will reinforce cohesion between the East London/ King Williams Town corridor.
- All administrative, executive, legislative and judicial structures will be integrated into one regional government.
- There are five universities: Rhodes, UPE, VISTA, UFH and UNITRA which will have to be rationalised.

The region has two capitals, the legislative and provincial/ administration capital, and there is no doubt about the existence of sufficient institutions or administrative capacity. It has a number of tertiary education institutions, three universities and two technicons and adequate health facilities. If you look at the House of Assembly and House of Representatives there is a fair amount of homogeneity.

A problem exists with the unfinished demarcation, which may hamper preparations towards regional government. It is important that various development forums and various organs of civil society begin the process now. Once the ANC has consolidated itself, it will begin to engage the establishment institutions in terms of making information available and of what needs to be restructured. Tremendous progress has been made within local government in restructuring the area, where diverse political parties and other institutions have come together to examine the restructuring of local government.

- From above it is clear that the region has sound administrative infrastructure.
- There is a need for various governments and administrations to set up committees with sectional working groups for purposes of integration.

- Development forums can play key role.

- Organs of civil society and broad MDM should play proactive role, eg. public sector unions.

7. Western Cape

- Houses National Legislative and Provincial Capital, therefore has sufficient institutional and administrative capacity to manage the development of the area.
- Has adequate tertiary and other training institutions, eg. UWC, US, UCT, Peninsula Technikon, and Cape Technikon.
- Has adequate health facilities.
- Only HOA and HOR, no bantustans.
- Largely homogenous province.
- A problem could be unfinished demarcation.
- Development forums and organs of civil society should broach role in initiating institutional building for Provincial Government.
- Local government negotiating forum starting point in bringing together diverse interests.

8. Possible framework of capacity for governance and development.

8.1 Dimensions of government.

Political dimensions: the ability of the political sector to establish objectives and to exercise power.

It is important that we develop our political institutions. We have to find areas that need to be strengthened.

Technical dimensions: constraints imposed by national resources, levels of education, personpower skills and industrial capacity.

It is also important that the ANC is aware of the technical resources available in the regions.

Institutional dimensions: It is important to assess the

extent to which the African National Congress can implement policies.

8.2 Setting good governance

Generic conditions for good governance:

- (i) tradition of rule. The African National Congress needs to look at the extent to which South Africa has a sense of nation state within the various regions.
- (ii) It is important that there is a sense of societal coalition for the development of social support and recognition that rules apply to everyone
- (iii) It is necessary to examine the extent to which business and labour relations have been have been developed and to what extent there is a sense of accord, where the future economy will be co-managed.
- (iv) There is no doubt that there is a undesirable extent of political diversity and it is important to find some form of political solidarity if we are to succeed in building local government.
- (v) The Civil Service also needs to be examined.

8.3 Meeting development needs and political regression

It is also important to establish proper institutions to channel social demands, because this is going to be a critical problem, where people are informed of what is or is not achievable. These processes have to be institutionalised. The alternative to this is populism, which can destroy the country even before the process has properly begun.

8.4 The role of the State (Provincial Government)

It is important to examine the role of the State as it impacts on the regions and to ensure that there is an enabling environment, both in the private and the public sector. There has to be balance, depending on the socio-economic construction of the programme reconstruction, between the two sectors.

The following institutions need to be strengthened:

1. Economic and political institutions
2. The judiciary
3. The Civil Service
4. The Auditor General
5. Information and analysis
6. Organisation for policy making.

Some institutions will apply in regional and some in national context. The first point applies in regional context. In terms of economic development, it is necessary to examine what institutions have been or will be put in place, that will steer economic development. It is important to look at capacity building (2 & 3) regarding the Judiciary and the Civil Service. A successful reconstruction programme necessitates (4 & 5) the examining of management and information systems. It is important to have the necessary information to do analysis and take the right decisions. Within the context of democratic pluralism, (6) it is important to have the necessary structures for policy making and participation within the state structures as well as organs of civil society in the process of policy making.

9. Strategic Perspectives

9.1. Current reality

As we move in this process of reconstruction in Provincial Government, there are fears and concerns.

- The legitimacy of a future public service and its acceptability to the community, particularly with regard to the decisions that have been taken at the World Trade Centre.
- How to address the expectations of present civil servants and future entrants into limited human and financial resources
- How will the expectation of the people be satisfied. Do we simply ignore the concerns that have been expressed about possibilities of lowering standards? We need to be more firm about our affirmative action programmes and the outcome of those programmes.
- The loss of employee benefits needs to be addressed. In the Transkei, it was recently

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said that the government of the Transkei owes the pension fund R 1.1 Billion. The government of the Transkei insists that the money will have to come from the Exchequer, because, in the interest of implementing parity of salaries across SA and the bantustan system, it was important that the salaries of the Civil Service be increased. When Pik Botha disagreed, the money had to be borrowed from the pension fund. It is unlikely that the money will be made available. There are many other public sector pension funds that have serious and similar deficit problems. It appears that some kind of change in employment benefits is inevitable and that there may have to be some scaling down.

- The loss of core skills in the public sector. A reconciliation programme in Zimbabwe in 1980, where incentive schemes in terms of employment benefits, was intended to retain the civil servants, had the opposite effect. The packages that were offered became an incentive for them to leave.
- Is there any way we can improve the ownership of the change process?
- What are the possibilities of institutional collapse and what is being done to deal with this possibility?
- There is concern that the public sector becomes too large and inefficient.

Trends that emerged as soon as the intention to transform the public service was announced:

- Fiscal constraints and corruption: In some governments people were promoted and the promotion was back-dated by several years, so people were receiving huge salary increases. This impacts on the inter-generational point of view, whereby future generation will have to pay their pension benefits.
- There is a demand for public services, rightly so as there is a huge development backlog. The African National Congress must be prepared for this.

- There is a 'non-payment' culture, linked to political factors, and therefore legitimacy problems. To what extent is it related to economic realities, or exist as a pure 'non-payment' culture?
- To what extent can we afford to have the public sector, in some of the regions, being the sole or major employment creator?
- Do we simply ignore global trends, in terms of what a government should do? How do these questions affect us as we build Provincial Governments?
- What can be done about self-interest versus public interest?

Factors that aid or hinder transformation

- The fact that the public sector is fragmented and badly co-ordinated is a factor.
- The composition is not representative. A familiar debate is that if you guarantee peoples' jobs, it hinders the implementation of affirmative action.
- There is concern that elite deals have been struck at the World Trade Centre, in isolation from the people. A plus is that there are numerous forums that can assist the process of transformation and these must be utilised and strengthened.
- The question of violence, declining accountability and low civil service moral as a result of uncertainty is truly a critical question.
- Is there is shift from control-oriented public sector management towards development management?

9.2 Key areas for transformation

- It is important as we begin building Provincial Government that the process is negotiated, is transparent and legitimate.
- There should be a clearly defined and structured change in the management

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processes.

- The changes that take place should happen in the context of the broader societal transformation process.
- It is important to provide political guidelines.
- Clear leadership of the process is important.
- It is necessary to examine institutional and financial relations system and inter-governmental and inter-regional relations. In other words we should not have a situation where the country is cut into many mini-countries.
- It is important that we look at a balanced relationship between political power, state power and society.
- The public servants, who are willing to co-operate, should be bought in and they need to be informed of the transformation process.
- There is a need for clarity and consensus on the new public sector values
- A clear sense of vision must be established.
- Clear roles and responsibilities.
- A balanced approach of crisis management and capacity building.
- It is important that we strengthen capacity in policy analysis, public and development management.

9.3 Action steps

- To embark on a massive public education programme, in order to inform the people about what regional and Provincial Government means and what their expectations should be.
- It is important that we expose the community leaders to the basic functioning of all levels of government.
- Training of trainers in civic affairs

- Sensitisation and orientation of people with respect to a common destiny for all South Africans.
- It is important that various community organs are involved in the process of governance.
- It is important that we create multi-dimensional planning and monitoring forums for the various local and sectoral interest.
- Practical basic economic knowledge in the identification and mobilisation of resources and planning, privatisation and budgeting, needs to be transmitted by various structures.
- We need to raise the principles of governance, for example in terms of accountability, transparency, effectiveness, predictability and consistency.

10. Practical considerations:

- i Start regional integration now.
- ii Use existing structures of civil society to initiate action.
- iii Form co-ordinated regional planning and budgeting structures for all sectors.
- iv Negotiate restructuring with the establishment actors and ensure there is political support, both established and non-established.
- v Begin to put together provisional Budgets for 1994/95. The financial year runs from March 1 to March 31. On April 28 there will be a new Government and the question will be who will draw up and approve the Budget of 1994/95. The new Government will approve the budget on Central level and Provincial level. However, the drawing up of the Budget has to begin now. The process in the Government began in September, when Government Departments were told to begin preparing Budgets. The various regions need to begin this process now. The Budget process is one thing that encompasses socio-

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economic planning and this is the one point around which we can begin to bring diverse structures together and begin to see provisional Governments emerging.

vi Start change management or organisational culture programmes; the mistake should not be made where we structure institutions and structures and leave the rot to perpetuate. Restructuring will not be successful, if the change is merely one of personnel, without taking values and ethics into consideration.

vii The importance of establishing shadow legislatures and cabinets.

vii Select shadow officials.

viii Training programmes need to be arranged for (vii) and (viii) with regional institutions. For instance, the people of the Western Cape should go to UWC and demand training programmes.

x These programmes should deal with the basics in the initial stages:

- * how Cabinet and Parliament works
- * regional governance
- * public finance
- * public policy
- * public management and
- * development management

xi Financial issues, financial implications for restructuring, in terms of pensions, retrenchment, cost of land, reform, and debt.

xii Do an minimal audit of what is available in terms of human resources and institutions.

xiii Ensure that the process is inclusive.

xiv Address what would be an appropriate size of the bureaucracy or the Provincial Government.

xv Find ways to 'sober up' peoples' expectations.

xvi There is a lot of dead wood in the Civil Service and rules and plans for retrenchment need to be drawn up and the financial implications examined.

xvii Work should begin on forming regional constitutions.

xviii The regional Public Service Commission.

xix Pension fund restructuring.

xx The critical role that the public sector unions should play.

xxi Ethics and anti-corruption measures. SA needs to establish these so that corruption is feared.

xxii Stress the importance of the continuing active role of the NGOs and CBOs.

xxiii Establish what the newly elected officials are going to do on April 28 and who will implement their policies.

xxiv How would incomplete demarcation impact on restructuring?

xxv Will public service restructuring be a slow process?

DISCUSSION

Renosi Mokate and Job Mokgoro

Q: Can the speakers clarify the economic potential of the capitals in the various regions?

RM: The Commission did not examine this issue, because it was not part of the mandate. It was also felt that it should be up to the regions to decide what capital they want. In the E.Cape, East London and PE each have their own nodal hinterlands from an economic perspective. What needs to be considered, in terms of where the capital is going to be, is:

- (1) how accessible and central the capital is;
- (2) what services can be provided to the majority of people in the region;

- (3) what the economic implications are of establishing a new capital, which require a new infrastructure to be created.

The experience in other countries has been that the idea of beginning a capital from scratch has been at great cost and not always successful, because a capital is not only about the administrative and governmental structure, it also involves other nodal function that go with that particular locality. The capital can end up becoming an economic liability, if there is no economic activity in the locality and the only purpose of the capital is governance.

Q: How do we address all the issues that need to be looked at in the brief period available?

RM: The reconstruction and development programme can give an indication of where we can begin and can be used as a basis for discussion for establishing the priorities. Once particular development needs are identified as being priorities, then the types of institutions and infrastructures that need to be developed will become clear. This will then have implications for the national and regional areas of reconstruction. The problem of having capacity problems at regional level is not necessarily unique to us. In the United States, it took many years before the institutional and administrative capacity at regional level reached the professional, competence and merit levels that exist now. Restructuring is a process that takes time.

JM: People in neighbouring African countries are under the impression that South Africa has a lot of time to prepare for change, which is encouraging. There is no doubt that it is late, but countries such as Namibia and Zimbabwe did not have as much time as we have. It is necessary to be strategic and make sure that the critical things are done.

Q: What are the retrenchment rules?

Q: Clarity is needed on the issue of a referendum to decide on demarcation and on the Secretariat that examines the parliamentary structures on a regional level. What is going to happen on the 28th of April, if the demarcation is informed by the referenda?

RM: A tally will be kept of the votes, in order to get a sense of what the distribution is in the various areas like Border/Kei, so that when it is necessary to set up a new regional structure, there will be awareness of

what the opinions are. Demarcating is an imperfect solution that has evolved with regard to the referenda, particularly in the Eastern Cape. In other areas the issue is not as problematic, because a region already exists and issues only involve districts. In the case of the Eastern Cape the issue is of potentially dividing the region.

Q: The issue of demarcation and capitals is an emotional issue. What the Commission of Demarcation needs to do is to inform the process in term of technical advise on what the implications are regarding making an area one region or two, and of having a capital elsewhere. In the Eastern Cape there are three regions. What are the implications of having the capital in any of the regions?

RM: Some submissions suggested that PE and East London can be sub-regional capitals, as for instance, Umtata. The argument suggested that, given the differences in the two regions, one can look at them as sub-nodes, and Queenstown can become the capital. This is for the people within the region to decide.

Q: Do diplomats fall under the category of civil servants?

JM: There are 320 occupational groups, one of which consists of diplomats. One area where training has been taking place for civil servants, outside of the parliamentary and the establishment system, is for diplomats. Not only do they have practical experience, having worked in various ANC missions across the world, but they have also had training from time to time. The people who are well prepared to go into a new dispensation, come from this sector.

Q: What is inter-active public service?

JM: When entering a university or technicon to register for a public administration programme you will be taught of how the institutions of bureaucracy operate and of the political neutrality of the civil servants; that they have to obey their political leaders. The question of managing public services is to a large extent seen just in terms of departments of the bureaucracy. Democratic plurality and participation are all stakeholders that one can conceivably think of in the policy making process.

Accountability mechanisms need to be horizontal and

not only vertical. In other words, civil servants should not only be accountable to political office bearers, and political office bearers should not only be accountable to politicians, but one must begin to see more horizontal relationships of accountability, where there will be greater accountability between politicians and the people and between bureaucrats and the people.

It is necessary to begin to look at creative ways of enhancing this accountability, by, for instance, establishing sectoral interest groups within society, that will impact on the policy-making process. These will include public sector units, public sector labour movements and interest groups such as agriculture in the National Economic Forum, who should all be directly involvement in policy formulation. Further, local government interest groups, such as SANCO structures, should be consulted in the policy-making process, so that there will be more inter-active participation in the process of service delivery.

Q: GGP in the Eastern Cape was given at seven percent. How much of this refers to Transkei, Border and the Eastern Cape? The debate centres on the issue of how one area is liable to another.

RM: If the Eastern Cape is split into three regions, a third of the population is located in the Cape Midlands, two-thirds in the Border/Kei area, then 65 percent of the GGP will be Port Elizabeth. There are disparities in the social and physical infrastructure in the region. Although the issue of placing capitals is emotional, one has to look at the long-term implications of having two regions.

JM: If one looks at the country as a whole and at the contribution of various areas, the bantustans put together will contribute about five percent. If one takes the seven percent and deduct five percent, it will go to the Transkei. The Border/Kei has seven and the Eastern Cape has eight percent contribution to the GGP. In the Border/Kei area a substantial percentage, probably over 90 percent of the seven or eight percent comes from Port Elizabeth. Thus Ciskei and Transkei have little to contribute.

Q: The Eastern Cape has appropriate infrastructures. What are the possible scenarios if Umtata is chosen as the capital?

Q: At the regional conference of the Eastern Cape it was announced that three of the branches were to be

given over to Northern Cape. What was the motivation for this?

RM: The Commission of Demarcation did not receive a submission that the region wanted to stay in the Eastern Cape. The decision was based on the submissions that the Commission received.

Q: The economic activity in the Northern Cape is high in terms of mining, agriculture and services and the population is small. When indicators are examined, there is a possibility for this region to be able to contribute. The actual figure of the Northern Cape's contribution cannot be two percent.

The adult/children ratio of the Northern Cape needs to be reappraised. Most able-bodied persons in the region move out of the region to seek work elsewhere.

RM: On the issue of regional capitals, the existence of the Northern Cape is problematic. Kimberley cannot be a capital because it is not a city at all. One comrade calls it a city with village trappings.

Regions of the ANC will remain as they are, until after the conferences. Someone from a disputed area, such as Colesberg, who appears on the regional list, will still serve in the regional legislature, once it falls into the Northern Cape. So we have kept that until the regional nomination list of the ANC is finalised.

Q: There is no tertiary education institution in the Northern Cape, therefore it will be impossible to go to the university to demand training courses to prepare the new MPs there. I am requesting that the organisers of this conference intervene in the areas mentioned above, otherwise the Northern Cape may end up being a liability to a new Government, where everything will have to be built, such as a new university. In terms of mining, economic activity exists, the figure mentioned is 63 percent, but mining is not an ongoing enterprise, as it is dependent on the international money market. The constraints that the region faces should be taken into consideration.

RM: Regarding the Northern Cape, seven out of the 15 Commission Members were against the Northern Cape being demarcated and eight were in favour. As the various regions were being discussed, and criteria being applied, in the case of the Northern Cape, the process fell apart and it was the only case in which it was decided to ascertain who was for and who against

the proposal. In the Commission there were people who felt strongly about the demarcation of Northern Cape and, unfortunately, this view won by a margin of one.

One of the difficulties that arose was that the first process of demarcation required the balancing of the submissions and the hearings. Unfortunately the Commission did not receive information from the people on the ground, who did not want to have a Northern Cape. It was therefore not aware of a significant proportion of the people who felt that the region should not exist. In contrast, the people who wanted a Northern Cape, send numerous delegations.

Q: On the question of strategic perspective, it was mentioned that it was necessary to become firm on affirmative action, whereas it was also mentioned that affirmative action was mildly accommodated in the interim constitution.

JM: There is only a mild constitutional provision for affirmative action, which is regrettable. Examining experiences elsewhere, for example in the US, where there was a provision in the Constitution revealed that for many years in the 1950s, in particular, human rights violations were still rampant. One does not necessarily have to depend entirely on constitutional provision with regard to affirmative action, because in addition, there are legal provisions that can be used, and future Parliament should examine this. But legal provisions are not enough and executive provisions can be examined. What is important is that there needs to be a comprehensive implementation mechanism for the successful application of affirmative action.

Q: What was the view of the ANC Alliance in the demarcation of regions in relation to the Western and Northern Cape, and what the position is now?

RM: The submission received from the African National Congress was that there should not be a Northern Cape region; that there should only be one Western Cape region. In the subsequent discussions, which came up concerning the new regions, such as Clanwilliam being part of the Western Cape, the position prevailed of having a Western Cape region. The outcome has to be seen as a process of negotiation, which does not necessarily change the position of the Alliance on the fact that they had never demarcated a Northern Cape region.

Q: How does retrenchment relate to the 'sunset clauses' that has lead to the situation of the Government of National Unity coming into being following the elections and how does the retrenchment of civil servants relate to the agreements that have been reached?

JM: The arrangements, as they currently obtain, do not guarantee jobs for people who are deadwood or that the people will be tolerated simply because of the sunset clauses. This refers specifically to the people, who have become directors or deputy directors and have moved into those positions straight from the position of secretary or typist, as has happened. I am referring to normal retrenchment packages where people are simply unproductive. We need to put together programmes, which will inform us as to how we should deal with these issues, particularly if one considers that retrenchment has serious financial implications. For instance, in a number of cases the current civil service were on retrenchment and were given five additional years of service, which is a serious constraining factor on the fiscus.

Q: How will the ANC address strategically the question of reducing the level of expectation among our people?

JM: At a seminar, organised by IDASA, on local government re-structuring in this region, this issue was discussed. Most of the people in the discussion group were realistic about expectations and there were structures from various levels at the seminar. What is important is that there should be transparency and consultation in the things that we do. Mechanisms and institutions need to be established, where people can be informed about the state of the economy. With information, consultation and transparency, the problems of expectations can be if not entirely removed, then at least minimised.

Q: When the labour force participation rate is mentioned, including both the employed and those seeking employment, what percentage of those people are actually unemployed?

Q: The question of regionalism embarrasses us because it has never been the policy of the ANC. Given the boundaries that are being presented, everyone is trying to carve something good for their own region. In the Eastern Cape, there are boundaries that are not clear. Historically, it is known that people

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where driven towards the bantustans, in which there is very little hope for development. According to the old Nationalist boundaries, Region D began from George. Has this been catered for, because there is prime land that has been occupied by white people, where, in terms of the land claims, we may be able to get a few acres for our people.

RM: Where George lies now is a result of the submissions that were received and the information that was provided. As a final point on the demarcation process, especially seeing as it is not a closed issue yet, and on the question of the referenda, one of the lessons learned from the process is that we need to look at:

- * how the rules of the game are drawn up;
- * what information those who are going to make a determination on the regions has;
- * what the rules are that they should be following.

What came out clearly is that, in terms of capacity, establishment organisations, such as the RSC, the municipalities and the business sector, had the ability to respond in a manner that we were not able to respond in.

The referenda will take place and a repeat process is not viable. In the second round, the response from people on the ground was better. One must anticipate that the debates will emerge again. One cannot afford to have a situation where the people who are ultimately going to have to make a decision do not have the necessary information.

For example, concerning Umzimkulu, the organisations that felt strongly about the area being in the Eastern Cape, did not make submissions. Information came through that the majority of the people wanted to be in the Eastern Cape. The Commission needs documentation and hearings. Therefore it is necessary to make sure that the information filters through. Had we been organised on the ground and made it clear that a Northern Cape was unacceptable to the majority of the people, the region may not exist at present.

Q: It was highlighted that the Transkeian Government presently owes the pension fund billions of Rands and this situation may be the same in the

other TBVC states. Does this mean that the TEC will inherit all the debts?

JM: The sub-council on finance under the TEC is to monitor, for example, unilateral restructuring during the process of the transition until the elections. The TEC is not a government, therefore the Government of National Unity will inherit these problems, because the reincorporation of the bantustans takes place on the 28th of April 1994.

CHAPTER 7

FINANCING OF PROVINCIAL GOVERNMENT

Phillip van Ryneveld

This paper examines the most important points relating to the fiscal aspects of regional government. The key points of the Constitution (and we can be satisfied with the outcome of the negotiations in this regard) are:

- 1: Each province is entitled to an equal share of revenue collected nationally. 'Equitable' is not clearly defined, which will be a long, political process, but each province is entitled to a fair share of revenue collected nationally.
- 2: Each province will be entitled to taxes which it levies and collects itself.

The equitable share of national taxes consists of:

- a) Percentage of VAT collected in each region. The idea is, though there may be practical problems in implementing this, because it is difficult to ascertain where the revenue has been generated, that a percentage of tax collected in the region will go back to the regional government. For example, if the Eastern Cape collects annually about three billion Rands of VAT, about five percent would go to the regional government.
- b) A percentage of personal income tax (PIT) and PAYE taxes. For example, if the Northern Cape raises half a million Rands of personal income taxes, paid to the central government, a percentage of that (the same for all regions), will be returned.
- c) The most important category is grants from the Centre, which will be both conditional and unconditional. Some of the grants to be paid to regional governments, will have conditions attached to them, stipulating what the money should be spent on. Unconditional grants are money passed onto the regions, to

spend it on what it deems necessary, on condition that it is within the legislative powers of the region.

The grants made to the provinces have to take into account:

- 1 The fiscal capacity of each province. This means that, if a province has little potential for raising revenue, then it should receive more money in grants from the Centre. Those with a higher potential for raising revenue will receive less from the Centre.
- 2 The fiscal performance, ie. the way in which the transfers are made must be done in such a way that there is some incentive for regions to perform as efficiently as possible.
- 3 The fiscal disparities, both within and between the regions.
- 4 The developmental needs.
- 5 Administrative responsibilities.
- 6 Other legitimate interests of the provinces.

The aim is to give each region a fair share of national revenue, in order to carry out their responsibilities. The share is made up of:

- * taxes from the region itself, over which the region will have complete control;
- * some unconditional grants from the Centre, money over which it will also have complete control;
- * conditional grants from the Centre.

The way in which it is done must be fair overall, taking into account factors 1 to 6 above.

The final decision on what a reasonable percentage of VAT or PIT is, or what a fair way of taking into account the different needs and capacities of regions is, lies with the national Parliament. All key parameters will be set in terms of the interim Constitution, by Acts of Parliament. But Parliament will be required to act, taking into account the advice of the Financial and Fiscal Commission (FFC).

Working out what an equitable arrangement between the different regions will be can be highly contentious. Therefore, having a FFC to bring an element of objectivity and fairness into the debate, can reassure the regions, that the process is relatively open, objective and transparent.

The FFC will be made up of 'experts', with public finance, public administration, management and technical experience, expertise in the technical areas that relate to the assignment of taxes and the making of transfers between different levels of government.

The FFC will consist of 18 people, with two full-time members, the Chair and Vice-Chair, a Chief Executive Officer and Deputy of the Commission. They will be appointed by the President on the advice of Cabinet. A further seven members will be appointed, on the advice of the Cabinet, who will be part-time. Each provincial executive will appoint one part-time member to the Commission.

The kind of governmental system that SA will have is one where concurrency is the most important. There are three levels of government, all participating in the delivery of a particular service, for example, education, public health and social welfare. With each level of government contributing in a different way to the delivery of that service. For example, in education, central government will

- (i) set standards;
- (ii) set the basic parameters;
- (iii) make key decisions; and
- (iv) ensure a national syllabus.

Regional government will perhaps be involved in the actual employment, and paying of teachers' salaries. Local government will be involved to a greater degree with the management of schools and there will be school committees as well.

These are concurrent responsibilities for education

with different levels of government participating in the delivery of education.

In these circumstances the basic way of financing service delivery is through conditional grants, where central government is able to place some basic conditions how the money will be spent by lower levels of government. Lower levels of government are involved in the final delivery of those services. This is an important aspect of the future system. A key question is the extent to which the national level will be able to intervene in how matters are implemented on lower levels of government.

It is important to work towards a system in which all three levels have appropriate autonomy, in which decisions and responsibility taken at that level of government where it is efficient to do so.

WHAT CAN BE DONE?

The term of the Parliament elected on the 27th of April will be three to five years. During this time, it is important to realise that there is not a lot of room for raising VAT, income or company taxes.

The key ways of achieving changes are:

- (i) some re-direction of expenditure across functions, reducing some and expanding others. Although one method which is often mentioned is reducing defence expenditure, there is a limit to how much it can be reduced. Everyone wants to spend that money ten times over. The defence budget can be reduced, but there are other demands, for example policing, which need to be examined.
- (ii) some re-direction of expenditure within functions, taking the existing education budget and spending it in a different way by prioritising, for example, primary education and ensuring that everybody gets their basic seven years of schooling.

The difficult decision here, in terms of political constituencies, is how much universities and secondary schools should be funded.

There will be quite a substantial reduction in expenditure per capita for social services that whites

are presently benefitting from, particularly concerning education. But even if spending on white education is reduced to nothing it will not make much difference. This is because, in relation to the population as a whole, there are few white children at school.

At the moment and during apartheid, white education has spent four, six or sometimes ten times as much on each white child than on each black child. The latest figures for 1990 are R4 000 for each white child and R900 for each black child. If this money is to be spent evenly, the figure will be R 1200 per child, which will be massive drop for white children, but not such a major increase for black children. This is an area where improvements can be made.

The most important improvements can be made through creating a more rational and efficient spending structure, that will come about from having a more rational and efficient structure of government. People do not realise the extent to which the new constitutional set-up will allow potential gains in the quality of public services delivery and the ability of government to deal with the problems that face the community.

Three key issues are going to be required to achieve more efficient and rational spending:

1. Good information, which is related to setting up democratic structures, enabling people on the ground to communicate their needs, what is working or not and to be able to force changes to make things work better.
2. More rational government structures. For example, in local authorities, presently divided, there are irrational municipal systems, with richer areas over-supplied with a high standard of services and poorer areas with such poor services that they have collapsed altogether. The problem in the inability of the government structures to bring resources such as, good administrative, managerial and financial potential in a locality to an area as a whole, to stream-line services.
3. Focus on efficiency needs to be addressed now, which involves getting efficient services and value for money from the public

sector. The ANC should not regard the public service as a job creation scheme. The public service can at best employ a tenth of the people and if it is turned into a job creating scheme, a privileged minority will be created at the expense of delivering services to everybody. It is necessary to ensure that the public service provides to the people at large value for money and the slogan we need is: "fund services, not governments". We fund governments to fund services, we do not fund governments and hope that services will be delivered.

CHAPTER 8

THE CONSTITUTION AND THE PUBLIC SERVICE: IMPLICATIONS FOR THE NEW PROVINCES

Sibisiso Nkomo

The new Constitution has been adopted at the multi-party negotiations, which will be binding after it is adopted by Parliament. It is important to begin to focus on the Constitution and to understand that it is interim and that will be in operation for the next two years.

THE HISTORY OF THE CONSTITUTION

Constitutions are not carved in stone, but are there to guide people for a given period of time. The Constitution of the United States of America, at one point defined black people as half-human. But eventually that clause was amended.

As we work towards a Constitution which will live for some time, we have to consider how it can be amended and if it has flaws. But much time need not be spent on that, but on trying to find a way to turn the interim Constitution into a living Constitution.

THE CONSTITUTION AND THE PUBLIC SERVICE

The following elaborates what the Constitution stands for, in terms of the public service and the provinces. We have to begin to think about the following:

- (i) how provincial governments will be structured;
- (ii) what a Premier is and what the functions are that will be carried out by the Premier;
- (iii) that the legislative assemblies need to be examined, and how the Commissions, for example, will make a contribution to the success of government within the provinces themselves; and

- (iv) the functions of the public service.

The public service is central to government. It has been argued that public service must be defined as the fourth branch of government. The first being the Executive, the second the Legislature and the third the Judiciary. The nation must at some point decide how to make this central fourth branch as important as the other three.

What the Constitution has articulated about the public sector:

- 1 There shall be a Public Service Commission for the Republic as of April 27, 1994.
- 2 The Commission will make recommendations, give directions and conduct enquiries regarding:
 - (i) organisation and administration of departments and the public service;
 - (ii) conditions of service of members of the public service;
 - (iii) personnel practises in public service, appointments, promotions, transfers and discharges;
 - (iv) the promotion of efficiency and effectiveness in departments and public service;
 - (v) code of conduct applicable to members of the public service.

The Public Service Commission shall play a role in formulating the Code of Conduct for public service.

The Commission, when so requested, will advise the President, a Minister or a member of the Provincial Executive with regard any matter relating to the

public service, or in relation to employment, remuneration or other conditions of service or functionaries employed by any institution or body, which receives funds wholly or partly by the National or Provincial Legislature.

COMPOSITION OF THE PUBLIC SERVICE COMMISSION

Any person that wishes to serve as a member of the public service:

- 1 must be South African, which is in accordance with international laws, that citizens are given first preference and it is necessary to prove indisputably, if an foreigner is appointed, that there is no citizen who cannot perform that function;
- 2 must be a person, who has sufficient knowledge of or experience in the administration, management or rendering of public services.

This particular clause was framed in this way, in order to create a situation in which all individuals can have the opportunity to enter the Commission or to serve as Commissioners. The counter-argument that was presented suggested that only those who had acquired degrees in public administration will qualify to serve as members of the Commission. At the bi-lateral discussions, as well as at the multi-party talks, the conclusion reached broadened the criteria, which were used to determine who is eligible to serve as a member of the Commission.

- 3 The Commission shall consist of no fewer than three members and no more than five members. The President appoints the Chairperson of the Commission and the Commission members. How the President will stack the Commission remains to be seen. In the current Commission for Administration (CFA) there are two members, one of whom is retiring in June 1994, therefore one can but guess what will ensue.

The Constitution allows for the existence of Provincial Legislatures and these will by law provide for provincial commissions, which will perform

functions that will have to conform to the norms and standards set by the National Public Service Commission.

THE PUBLIC SERVICE

The Constitution provides that there shall be a public service in SA, which shall be national.

The Public Service shall:

- (i) * be non-partisan
* career-orientated
* guided by equitable principles;
- (ii) * broadly representative of the South African community;
- (iii) * efficient and effective in the delivery of services and of its operation;
- (iv) * unbiased and impartial in serving all members of the public;
- (v) * regulated by law;
- (vi) * loyally execute the policies of the government of the day in the performance of its administrative functions.

Point (ii) is a powerful weapon to bring about a public service, which will be representative of the South African population. It will be a pity if (ii) will be interpreted as a weakening of affirmative action, because affirmative action is one of the techniques to bring about representativeness.

It is not only affirmative action, which can be used to bring about a representative public service. Other techniques should be developed.

We must also keep in mind that affirmative action is not a policy, but a technique. As an example, the reason it was implemented in the United States was due to the Civil Rights Act. Once it was passed it was realised that society was not becoming representative and therefore the technique of affirmative action was put into place to facilitate and to enhance the Civil Rights Act.

South Africa has a Constitution that talks about representativeness and allows the opportunity to

examine how affirmative action and other techniques can be used to make the public service representative.

- (iii) The public service has been given an added responsibility to efficiently and effectively deliver services. This challenge should be met as the failure to develop an efficient and effective service will make the population dissatisfied.
- (iv) The public service must be unbiased and impartial in serving all members of the public.
- (v) The activities to be carried out by the public service will be regulated by law, which will be formulated by the Parliament.
- (vi) The public service will loyally execute the policies of the government of the day, whether it be national or provincial.

If a public servant tries to sabotage the government, this point gives the opportunity to get rid of these individuals.

An important provision in the Constitution is that all South African citizens are entitled to be employed in the public service, whether at the national or provincial level. Local government is not included as it has yet to be defined as part of the public service.

The structure of federalism encompasses the argument that local governments are subject to provinces and to the national levels of government.

IMPLICATIONS OF THE CONSTITUTION

- 1. The Constitution has started a process and regions should now begin to examine the position of the office of the Premier, how the Legislative Assemblies and possible departments and committees should be constituted, which will play a critical role in facilitating governance, the delivery of services and other functions that need to be carried out by the provinces.
- 2. Regions should examine how to establish a broadly representative and efficient public service, which will comply with the norms and standards set at the national level. Here

again it is important to begin to look at affirmative action to make provincial government and their public services representative.

It is necessary to consider other techniques which can be brought to bear to make governance at the provincial level and their public services representative.

- 3. It is important to consider inter-governmental relations in order to bring about uniformity in the delivery of services and to bring about development.

One should also consider how inter-governmental relations can be used to create pride in the levels of government that are going to emerge, and in federalism.

Despite not having wanted a federal system, the ANC should begin to consider what is facing it now, and after the elections, otherwise it will disempower itself. The provincial governments will come into existence after April 27 and the African National Congress has to ask if these governments are the African National Congress. If they are, how will the African National Congress make the governments function successfully.

The African National Congress does not want to end up with a system where the governments that come into existence will be still-born, because it refuse to make them and their public services work. Elections are there to give the ANC the opportunity to build on what is coming.

- 4. Inter-regional relations of government are important. It is necessary to consider how the ANC will make provincial governments work together. We do not want a country that is divided like the former Yugoslavia.
- 5. The policy process is also critical when considering provincial government. It is important to be clear about who formulates policy: is it a public servant or a person who has been appointed to serve in a provincial cabinet, for example.

6. It is important to distinguish between office bearers and public servants. In a workshop, the comrades from Zimbabwe said that, when they took over there was confusion between the two definitions, where public servants wanted to be the policy makers and office bearers wanted to become public servants. This was not intentional, but arose from a confusion between the categories. Civil society should influence the policy process and not formulate policy, as policy is formulated at the level of the Legislative Assembly. This does not mean that civil society is not involved in the process. The role of public servants, in the policy process, is to come up with policy options, enabling those, who are entrusted to and are voted into office by the African National Congress, to be the ones who formulate or make policy.

DISCUSSION

Phillip van Ryneveld and Sibisiso Nkomo

Q: In your description of the public service, point (ii) can be problematic. What does the term 'broadly' signify. The public service should reflect the population composition of the country.

Q: Will the country be inheriting the present public service? What is the best way of handling the incumbent public servants, to bring about physical changes? The chances are that the public service will be doubled if we create a new one.

Q: What will happen to the pensions?

Q: The reconstruction levy of taxing high income groups should not be limited to this group, because of the conditions of the country when the new government takes over. The Department of Education is squeezing the fiscus, while other problems, such as housing and other areas, will require higher taxation to be solved.

PvR: Reconstruction is often discussed in terms of finding the money to fund it. Although it is an important issue, the main question is whether an organisational structure exists with management and implementation capacity to effect changes. It is not

enough to allocate R5 billion on a housing programme if there is no organisation with management and implementation capacity. Developing these capacities is a difficult process.

There needs to be a balance between the extent to which we spend money on the reconstruction process of the public sector and how much taxes we extract from the private sector. When high levels of taxation are reached, it limits the incentive for people to invest. It is therefore important to be careful. There is room for reconstruction levies and extra taxes, but it is wrong to focus on thinking that the problems can be solved only through higher taxes.

A wealth tax can raise a certain amount of money, but the extent to which one can raise taxes is limited for technical reasons. Although the key tax to focus on is VAT, it is problematic as VAT is a broad-base tax. What is needed is to work towards different VAT rates for different goods. This can be complicated.

It is desirable to reach a situation where we can enhance public services and achieve greater stability as well as build-up greater human capital in terms of education. It is important to reduce poverty and crime levels in order to increase investor confidence in both the public and private sector and thus generate the growth that is required and enhance the capacity to deliver better a public services.

Q: On the question of inter-regional relationships and the flow of goods among the regions: do excise duties reside in the centre or do they reside with the regions?

Q: Tax credit can reinforce re-construction programmes in a particular region. Whose responsibility is this, the region's or the Centre's?

PvR: The Constitution has a provision that provincial government shall not be entitled to raise taxes detrimentally affecting national policies, inter-provincial commerce or the national mobility of goods and services, capital and labour. This makes it difficult for a regional governments to levy excise duties that are different to the levels of excise duties that are being levied by other provincial governments. If one regional government places a high duty on a particular good, it will lead at some stage to a distortion of the flow of goods between regions. A similar question is which regions can get a tax credit

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and who will make the decisions.

There needs to be a National Development Programme and a recognition that some areas are much poorer than others and, therefore, need to be given preference (for instance, on competing taxes or trying to make taxes in one region lower than in another). This can lead to the kind of disorganisation, such as in the Ciskei where a zero tax was created, with the result that paper-companies were being set up. The idea is to have the type of tax system that will allow harmony throughout the country and that decisions on taxation will involve both the Centre and the regions. This will mean that the decision as to whether a particular region gives credits to a company operating in that region is not something that can be left to the region alone.

It is necessary to reach agreement on how much autonomy regions should have, to give either tax credits or levy extra taxes, and what the parameters should be within which they can work. The Constitution is set up in a way that gives the power to Central Government to stipulate taxation. This will avoid the creation of a confusing tax system. However, it would not be in the interests of Central Government to make all these decisions and they will want to devolve some of the power to the regions, so that the regions can take some responsibility for raising revenue.

A bargaining process will be needed to afford the provinces some lee-way to offer tax credits of some kind or to levy higher taxes, within the parameters that Central Government will set.

Q: Concerning appointments to the Fiscal Commission and Public Service Commission: in Zimbabwe to qualify for a position in the government experience of five years was necessary for a management and administration post. This made the implement affirmative action difficult.

PvR: Initially, when the National Party Government proposed who should be on the Commission, they wanted restricted conditions for serving: people who were public finance experts, by training or through experience. The notion of organising fiscal decentralisation requires a lot more than simply expertise in public finance. For the Fiscal Commission one should be looking for people with experience in all types of management systems such

as statistical analysis and administration, as well as economics and public finance. One will be looking for the types of people who can bring to bear the requirements to make the kinds of decisions that the FFC has to make.

In terms of affirmative action: it is not about putting people into positions, who are not capable of doing the job, simply because of the colour of their skin. It is about trying to develop a system, whereby the people who can do the job are representative of the broad South African society. The Constitution does not stipulate five years of experience. The President and Cabinet, in making the decisions as to who should be on the Commission, should try to ensure that there are people with the expertise to do the job. They should structure it in such a way, that the skills and the expertise can be broadened to get the representativity that is required.

There is a general sense to include affirmative action through the Constitution and the Bill of Rights, and the appointments and the way in which is phrased, does not preclude affirmative action.

Q: According to paragraph 2.1.1 of the Commission, the chairperson is appointed by the President and the Constitution is silent on the other members who are to be members. If the chairperson appoints the others there can be a problem of nepotism.

SN: The five members of the Public Service Commission will be appointed by the President. The way in which the Constitution has stipulated who becomes a member of the Commission is quite a flexible way of accommodating a variety of members. One can become a member if one;

- (a) is a South African citizen; or
- (b) has sufficient knowledge of/or experience in administration, management or the rendering of public services.

Within the Democratic Alliance there are a number of people who can qualify to serve as members of the Commission, particularly as the Constitution stipulates 'sufficient' knowledge.

Q: There is also no provision for the period that the Commission sits, which is a point of concern.

SN: The term of office was not stipulated in the

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Constitution. This will be agreed upon by the new government.

PvR: In terms of the Financial and Fiscal Commission, it should in theory provide a useful forum in trying to decide upon those tenets.

Q: The third question involves finance: will there be national and regional auditors? How will their work be distributed?

PvR: The National Auditing Office will be able to ensure that the regional office works in a reasonably sound way, so that there will be some regional autonomy, with an overseeing function of the National Auditing Office, regulatory function in terms of VAT, etc. Final decision on what taxes can be levied will reside with Parliament, determined by an Act of Parliament acting on the advice of the FFC. This should enable a rational system to develop.

Q: Who will play a regulatory function in terms of the distribution of taxes, designated and undesignated grants? The question is being posed because, in the current situation bantustans and other parts of South Africa have created many different forms of taxation, of VAT levies etc. Is there any planning of a regulatory function and who will play it?

PvR: This is fairly vague at this stage and it will have to develop in practice. While the Constitution provides for centralised government, it does not define too many details. It does allow, however, (through a fairly open process), input from a number of interested parties and it allows us to work towards a system which will be rational and practical. At this stage one cannot say what designated and undesignated grants will be for. What one will attempt is to give each level of government some money over which they have complete control, e.g. regional governments have complete say over undesignated grants. These tend to be given to poorer regions, which cannot raise funds from taxation themselves.

Q: What is the distinction between office bearers and public servants?

SN: Office bearers come into their position through the ballot box. Public servants apply to work as specialists within the public service and are non-partisan or apolitical.

Q: Concerning loan applications to the IMF: how will the Government see to it that the structural adjustment programmes are implemented nationally? This will have a bearing on the grants given to the regions.

PvR: South Africa has committed itself to quite a stringent re-payment of loans to foreign banks in the next few years. Some will argue that we could have had a better deal, but, in 1994, South Africa will be paying quite a few billion dollars back to the international banking system. The IMF loan should be seen in the light of the country needing that kind of money in order to be able to replace loans that will have to be paid back, although it will not replace all of it. One should not be overly concerned about the IMF loan and its conditionalities.

What is alarming is if South Africa has to pay back the private loans next year and does not have the foreign exchange to do so. This may mean that more money will have to be borrowed on stricter conditions or that the economy cannot expand to the extent that is necessary.

Q: What is the portion that the regions contribute to the national GDP?

PvR: Gross National Product (GNP) is what the citizens earn and Gross Domestic Product (GDP) is what is earned inside the country.

Q: In terms of funding services and not governments, the Western Cape has more technocrats who can write project papers for NGOs. More NGOs are providing services and we find that more and more people concentrated in a particular region. There is a problem with the representativeness of the South African society. Does the Constitution mention that parliamentarians cannot be recalled until they have finished their period of service? How is the process of replacing MPs dealt with in the Constitution?

Q: Does the public service fall under the executive?

Q: How can one measure if one is funding services not governments?

PvR: Partly through the democratic process and making sure that ordinary citizens have a voice. They are the ones who either benefit from services or not,

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which will ensure that governments focus on the efficient delivery of services, rather than on ensuring they have salaries for their employees.

In terms of ensuring efficient services in making the transfers for grants to provincial governments, it states in the Constitution that the National Government should take into account fiscal performance or how effectively regional governments are delivering services. It will take some time to develop a system for doing this in a rational way and one should draw from the experiences of other countries to develop a set of indicators to begin to help us compare the delivery of services in different provinces. This can make the delivery of services more transparent.

Q: Financing regional governments: the speakers have given the impression that the regional governments will just be there to collect taxes and to wait for grants. In other countries governments set up projects to be funded by the state, such as transport systems, etc, which acts as income-generating sources.

PvR: Income generation through state enterprise is a rational thing to do. There is a history in South Africa of efficient State enterprise, that have been important in the development of the country. ESCOM is an example. However, while these can be effective for developing the economy, in the sense of providing infrastructure, they are not effective in raising money for governments to spend on other services.

The key way to raise money for public services in a country is through taxation.

CHAPTER 9

PROVINCIAL GOVERNMENT: THE CANADIAN EXPERIENCE

Al Johnson

There are many similarities between the Canadian system of government and the system South Africa is entering. Understanding why Canada is a federal state and why the notion of provincial government is for us natural and desirable. The population of Canada is 27 million and the country extends five thousand kilometres wide. It is the second largest country in the world geographically.

Provincial government comprises:

- * The Legislative Assembly
- * The Cabinet
- * The Premier
- * The Ministers
- * Departments

The topics of this presentation are an introduction to the organs of provincial government, what the governments do and are expected to do and the dynamics of decision-making within the organs of government.

ELECTORAL METHODS

The Legislative Assemblies in South Africa will be smaller than those in Canada and will range from between 30 and 100 members. The members will be chosen in a different way, using the list system. In Canada every province is divided into electoral districts and if one wishes to be a candidate one runs within one's party at a party convention within one's electoral district in a seat nomination. Therefore, when the elections are held, they are held between individuals in an electoral district. It is interesting to speculate whether this gives the individual more authority or legitimacy within the Legislative Assembly. It does give more authority in the sense that s/he clearly sought office in a public way.

THE CAUCUS

Caucuses are a fundamental element of the Legislative Assembly. Each party in Canada's legislatures has a caucus and this is the way in which party solidarity is maintained on the floor of the Legislative Assembly, in the face of policy issues upon which there may be some differences in the caucus.

The meeting of the caucus is where the Premier and individual Ministers make their case and arrive at some kind of accommodation or understanding with their supporters.

THE CABINET

The cabinets in South Africa will be smaller than in Canada, which range between 20 to 30 members, while South Africa will have a maximum of ten Members, in addition to the Premier. The Cabinet Members are chosen by the Premier, who has the sole and final authority in choosing his or her Cabinet Ministers.

The situation in South Africa is different, because of the interim government period and you will be having a coalition government. Many Canadians feel this is the best type of government, as, due to the differences within the Cabinet, there was a greater sensitivity to the needs and demands of the people of the province.

THE PREMIER

The power of the Premier within the Cabinet in Canada's provinces is quite significant, in that s/he can be a minority of one, but his or her decisions remain the decisions of the Cabinet.

CABINET COMMITTEES

There are Cabinet committees in the provincial government which are used in areas such as social and economic policy, or any area which seems to warrant special attention. One consequence of this is to enable the Ministers, who are concerned with this policy to arrive at some judgement as to the relative priorities and the likely consequences of taking a particular course.

The Cabinet committees can also be used as an instrument of bringing pressure to bear on the Minister of Finance.

CABINET SECRETARY AND THE SECRETARIAT

There is also a Cabinet secretary and secretariat in Canada's provinces, which is made up of professional public servants, thus not politically appointed. It acts as a nerve centre of the government, that keeps the Premier informed.

POLICY ADVISORS

The Premier has an office that is politically appointed. Premiers have a Chief of Staff and a small group of advisors on policy, ranging from two to six, depending on the size of the province. The policy advisors are there to advise essentially on the perceived political consequences of policy options, which are developed for Ministers by the senior public servants.

COMMUNICATION ADVISORS

There are communications advisors, who are speech-writers and press liaison officers. The Premier's office is, for the Premier and for Ministers, who have similar offices. This is a kind of insurance that different perspectives are brought to bear on policy. In South Africa's situation, ensuring that the Minister does not go in without support.

CONSULTATIONS

Ministers also have a political office, a Chief of Staff and a smaller number of advisors. Beyond the Premiers' and Ministers' offices, there are highly informal consultations between Ministers and the organs of civil society, that Canadians call policy institutes or interest groups. These are advisory sessions, that are held informally.

STRUCTURES OF THE PUBLIC SERVICE: THE DIRECTOR GENERALS

All Director Generals (DG) are appointed by either the Prime Minister or Premier, but the tradition is that they are appointed substantially from the ranks of the professional public service. There are exceptions to this, when professionals are brought from outside the public service into it and sometimes a kind of politicisation of the DGs in their appointment, which is generally not well received.

THE DEPARTMENTS

The departments are staffed with public servants, appointed by the Public Service Commission, on the basis of criteria that are more or less similar to the ones in South Africa, except that the representativeness of the society does not explicitly appear in the legislation nor in the Constitution of Canada.

Twenty-five percent of Canada's citizens are French-speaking and members of a culture that is substantially different from the Speaker's culture.

It is important that the concept of representativeness be entrenched in the legislation, although this is not the case in Canada at present.

The departments are organised into broad categories of economic, social and others.

STRUCTURES OF THE PUBLIC SERVICE - ONTARIO (LARGEST)

(ORGANISATION OF GOVERNMENT)

PREMIER		PREMIER OFFICE	
CABINET	SECRETARIAT CABINET	CABINET	COMMITTEES
Min. of FINANCE	STATE EXPENDITURE	MANAGEMENT or TREASURY/BOARD	OTHER CENTRAL AGENCIES eg: Procurement
MINISTERS		DEPARTMENTS	
ECONOMIC		SOCIAL	OTHER PORTFOLIOS
Finance Economic Dev and Trade Agriculture Transportation Energy and Environ.		Ed and Training Health Housing Culture and Recreation	Jusitce Solicitor-General Local Govt. Northern Dev.
LABOUR			
Consumer and Commercial Rel.		Citizenship and Multi-Cultural	

The graph represents the public service of the province of Ontario, which is the largest, which is why the graph indicates, under local government, the section called Northern Development. A large part of the province of Ontario is quite northerly and feels isolated, which is a political problem. A portfolio exists in order to resolve these.

In Canada, the local governments are established solely by the provinces. There are no constitutional provisions that apply, as is the case in South Africa.

CENTRAL MINISTRY OF FINANCE

Beyond the operating departments, there is a Central Ministry of Finance, which is not dissimilar to the South African department, and her Central Statistical Agency, which gives economic policy advice. A body in every government in Canada that corresponds to the State Expenditure Department in South Africa, is sometimes also referred to as the Department of Finance.

THE TREASURY BOARD

A management body, a committee of the Cabinet, which is called the Management Committee or the Treasury Board, really corresponds to about half or two-thirds of the Commission for Administration (CA) in SA. If one takes out the appointments authority or the power to recommend appointments from the CA and place it into a public service commission, it becomes the Canadian model. The rest of it has to do with the management of the public service, which falls under a Minister or a Cabinet Committee, not under an independent agency.

FUNCTIONS AND RESPONSIBILITIES

The list of functions of schedule 6 of the draft Constitution almost replicates the competencies that have been assigned by the Canadian Constitution to the provinces. SA has a provision that Canada lacks, which is important: the national government may, in respect of any of these competencies, under certain

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conditions, legislate and over-ride, or cause the provincial legislation to conform with the national. The Canadian national government has the power to do this, by way of conditional grants, or so-called spending power.

Almost any function of government has provincial and national dimensions. Constitutional lawyers call these concurrent powers. The question is how the national government converts a provincial programme into a national one. If it does not have the power to do this, then the provinces become more or less independent principalities.

The powers the South African government has are stronger than the Canadian ones. To illustrate this: Canada has a national health care scheme under which every Canadian is entitled comprehensive and universal medical care. A citizen cannot not pay a doctor additional money to get better service. The scheme was achieved as it could be in South Africa, by using the provisions in the Constitution.

THE DYNAMICS OF POLICY MAKING

Focal points or centres of policy development and the development of policy options.

1. The political process: Canadian political parties tend to develop a political platform which establishes the general directions in which they undertake to the electorate to pursue. For a political party that has clear political objectives and principles, these become almost an agenda for the Ministers and the departments of government.
2. Individual Ministers in their departments can establish more precise policy directives or programme objectives, in order to meet the issues with which they are concerned as ministers. This is an equally powerful force, depending on the particular Minister's ability to put his views across in Cabinet.
3. The Ministry of Finance: Every year you are expected to examine the economic forecast and try to get some sense as to the revenue that you can expect, given the level of economic activity that is expected. You are forced to measure those revenues against the

expenditures to which you are committed, because of past policy decisions, and against the expenditures you want to undertake. You are forced to make judgements about priorities, about living within your fiscal framework, which involves calculating how much debt you can afford to take on.

Here the pressures between these forces and the forces of the Treasury and Finance must be joined. The dynamics of this process are important and inevitable. For example, the Government of Canada wastes 33 percent of every Dollar collected, on interest payments, instead of on education and health. Those who believe that the debt can be constantly increased, have ended up as being the obstacles to progressive government.

Against that the speaker is convinced that some kind of planning agency is required. The power of the process of reconciliation and conciliation each year is so great that it is possible to lose one's vision:

- * to fail to perceive the warning signals, or
- * to fail to read the social forces of the nation.

If this happens then the country is proceeding, almost mechanically, from year to year, facing the fiscal crisis.

The longer-range planning view, which must involve the Ministers and informal consultations of advisory groups, is the vehicle, by which balance is achieved between fiscal responsibility, which is one imperative. The other is responding to society's needs as it perceives them. To achieve this a complex of institutions and people is needed.

DISCUSSION

Q: What is the inter-connection between the state expenditure section of the finance department and the rest of the ministerial departments?

AJ: This varies a great deal between governments. The uniform practise was for each Minister to come to the Treasury Board to defend his or her Budget, in the face of all the constraints mentioned. The same thing was true of the Cabinet Committees.

The Treasury Board would be made up of a

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committee of members, which would make their allocations between competing programmes, on the basis of:

1. the Government's priorities, as they had been enunciated at the beginning of the annual process;
2. the effectiveness of the programme, and
3. the general political or ideological climate.

Decisions are sometimes made more arbitrarily. In one or two governments, the major decisions were made by the Department of Finance and announced in the Budget, with the Ministers finding out on Budget night what the expenditure allocations were.

Q: Can the speaker give any advice on good local government.

AJ: Canada and South Africa have such a different background, that it is difficult to think of something helpful to say.

The ANC comes from a background where it has used action at the local level to fight apartheid and gain representation in government, which has led to a difference in structures.

Canada came to local government, because she used to be a number of colonies of Great Britain. The way that Canada broke away from Great Britain and defended herself from the United States, was to bring together the institutions of the colonies into a new federation and each colony brought with it its own local government.

Q: What mechanisms are built-in in terms of fair distribution of different parties, when forming the Cabinet?

AJ: The representation of parties in Cabinet: where there is a majority government, the Cabinet is made up exclusively of the members of the majority party.

The situation in SA is different, because a conscious decision has been taken, that there will be an interim Government of National Unity, which essentially involves coalition.

Canada has a coalition government, which can come about in two ways. The party that holds the balance of

power may not even want to go into the Cabinet, which is a bit of a Canadian tradition, but when they do go in they will simply negotiate the proportion. There are no constitutional provisions about the proportions.

Q: How can one ensure, in elections based on proportional representation, that a situation does not arise where a particular candidates, elected into the regional legislature, due to their ability and capabilities, are from a particular locale and this locale would be given more attention than the other areas in the region?

Q: Does the provincial legislature in Canada have exclusive powers? If they do, how does this impact negatively on the central legislature?

AJ: Yes, there are exclusive powers of the provinces. The provincial governments are inclined, because Canada does not have concurrency of powers, to talk of all of their powers, even though they may be exercised within their borders, as being exclusive, discouraging the national government from interfering with what the governments consider to be their domain.

The spending power or the power of the purse has had to be used, in order to achieve national dimensions to provincial programmes.

South Africa has a Constitution in which it is possible to legislate, as well as to use the power of the purse. It still leaves you with certain powers, which are exclusively provincial. Even in the field of taxation, the provinces and the national government share the power to impose taxes.

Canada has an elaborate equalisation system to ensure that provinces all have a fair level of services, but the sense of exclusive powers is stronger than what one can sense in the South African democratic movement.

Q: An elaboration is needed on the significant powers of the Premier.

AJ: The Premier was able, through Canada's political practises to make important decisions, with Cabinet concurrence. The Prime Minister is a powerful decision-maker for five years, and suddenly he is reduced from 175 seats to two. S/he can be very powerful, but the wise Prime Minister is the one who

listens to all the forces that s/he is surrounded by.

At provincial level, the Premiers are more careful about the exercise of power, because they are so close to the people. This is one of the great advantages of federalism. If it is manifestly necessary to have a government at that level and, if one believes in democracy and that a government should be democratically elected, almost by definition, one has premiers who are in touch with the people.

Before the speaker went into national government and was still working on provincial level, he knew his people, because they had direct access. In the national government security became an issue, which makes a difference to how one exercises power.

Q: How are the powers of the Premier blocked, if this needs to be done?

AJ: The actions taken have been constitutional ones. What had to be decided was whether the Premier was acting within the powers that had been assigned to the province in the constitution or not. There are certain administrative law remedies, but they are so unimportant so as not to bear mentioning. Essentially the remedy is politics or the vote.

CHAPTER 10

PROVINCES: MODELS OF POLICING

Clifford Shearing

It is necessary to understand the implications of the Constitution for the new kind of policing structure we will have in South Africa and to place into context what needs to be done. It is important to:

- * to look at the history of policing;
- * to look at where it has been going;
- * to look at how we fit into this history, and
- * to use, as a point of comparison, policing in Canada.

The purpose of policing is to create primary security and to protect people and their goods. It is a community activity and an issue of governance. There are two critical questions:

- * Who is responsible for guaranteeing security?
- * How will this guarantee be provided?

History shows that these two questions have been answered differently over time. History can be broken up into three periods:

- * Pre-modern
- * Modern
- * Contemporary

THE PRE-MODERN PERIOD

Policing was not a centralised profession or an institutional activity. It was a de-centralised, local, unspecialised activity and was not a central government responsibility. Policing was everybody's business. There were local communities responsible for creating the peace.

While the government of the day, the King, had a

concept of keeping the peace, creating security, the actual implementation was local and unstructured. There were problems as urbanisation began and the move to an industrial environment began.

In the 1800s in Europe, there was a major change in the way in which policing was organised. The change was moving into a policing structure, where the government hired specialised people to engage in policing. Policing became a matter of government initiative and became coercive. The tools of government and the state police were the gun and the club. Policing became bandit-catching, looking for the people who were causing problems and locking them up.

What is critical is that policing became a government and a professional responsibility. Police departments were created, and the issue of training and keeping the departments viable, became important. What happened was that security became equal to what police officers did.

The issue of police officers was concertinaed into the issue of security, so that in order to get more security, more police officers were needed. In order to institutionalise security, it was necessary to institutionalise police officers and to create police departments.

A new crisis in policing around the world has been emerging for the last decade, where the method of policing has not working well and crime has been increasing, while police have been struggling to deal with security and providing communities with security and peace.

Questions are being raised as to whether one should continue to invest in the old model of policing or not. There is an emergence of experiments, in which people are challenging the 'modern' way of policing and are looking for new ways of engaging in policing. The main trend globally, is to argue that police do not

own policing and that many agencies and people need to be engaged in policing, including the police, who may be the people who control the use of arms in policing. However, institutions or networks of security are being discussed, as is the move back to engaging a greater number of people. In South Africa, there is, through the struggle, a history of this kind of local involvement in keeping the peace.

A good illustration of this tendency, is the use of marshals. In South Africa, local organisations engaged in a march, are responsible for their own policing, in conjunction with the police.

The new arrangements that are emerging look for ways of negotiating with government about policing. One option is that the police should no longer own policing. What happens, when it is required that all security should be provided by professionals, is that the government's entire security budget is allocated to the police.

The Canadian model of policing, which remains a modern model, is used as an example, because it attempts to balance control at local and central levels of government. Two critical points of the Canadian system are:

- * Responsibility for policing is at the municipal level where the municipality is required to establish police departments, and
- * national government has organised a police organisation, which can be used by municipalities to provide for police officers.

The responsibility is local, but the government of Canada has created the Royal Canadian Mounted Police (RCMP), which can be contracted to municipalities. They can also create their own police should they choose to do so.

When renting the Royal Canadian Mounted Police (RCMP), one enters into a three-year contract and specifies what kinds of activities the RCMP will be engaged in and where their priorities will be. It is an interesting structure, because it allows for all the economies of scale, central training and standards with local control.

The Canadian government encourages the use of the RCMP by making it slightly cheaper. In Canada, a

number of towns have created their own police and others use the RCMP. The structure maximises choice, is cost effective and places the responsibility and control at a local level.

THE IMPLICATIONS OF THE NEW CONSTITUTION

The Constitution provides instructions or directions in the creation of a new police act. South Africa will have modern policing, similar to the international model. For instance, the Canadian police acts do not require a municipality to make sure that people are secure, which one imagines should be the objective. What they do is to require municipalities to create a police department and to have it well trained.

A municipality can, for instance, obey all the legal requirements and still have an insecure community. The municipality is not held accountable for providing safe and secure places for people to live and work in, but are held accountable for creating police departments. South Africa is working within the same model.

The Constitution requires the creation of a Police Act that will compel the establishment of a police department. Like the Canadian structure, the South African Constitution also requires a move in control. The SAP, if the homeland police are excluded, is controlled by the national government. The new Constitution encourages more local control, to move to the level of provinces, as opposed to moving to the municipal level.

CONSTITUTIONAL PROVISIONS THAT WILL DETERMINE THE TYPE OF POLICE SOUTH AFRICA WILL HAVE

All existing police departments and organisations will be integrated into the SAP, thus making the institution larger than it is at present. The new SAP will be responsible for maintaining law and order. The Constitution further requires that the national Minister and the Commissioner be responsible for maintaining the police. The Minister is to give over-all directions to the Commissioner and s/he will be in charge of the day-to-day operations, which is according to the standard international model. It means that the government is responsible for policy,

but the implementation of policing remains with the police. This is called the Doctrine of Police Independence.

The Constitution requires that the national government be responsible for integrating and maintaining the police organisation, to ensure, among others, that it is well-trained, well-recruited, that the nature of promotions is fair.

The responsibility for how it performs and for the priorities of policing in particular areas, lies with the provinces. A member of the provincial government will be responsible for the way in which the police organisation is maintained.

Similar to the Canadian model, national government creates the police, but how it is used is determined by the provinces. South Africa will have Commissioners of Police in each of the provinces, who will be required by the Constitution, to maintain law and order and to create particular institutions: police stations, patrols and community policing.

The new Police Act will direct the regional Heads of Police to use particular strategies and means to preserve security, and the means are organised around the existing understanding of police structures.

There are two other interesting requirements:

- * The Constitution requires that police community forums be instituted to provide local input, although the control is on provincial level. The purpose is to have the ability to influence both the policy and practise, to monitor and to advise.

Control remains at national level with the organisation at provincial level. Local communities can thus hold the police more accountable. Although local police can be established, these are restricted to by-laws. They can be traffic police or crime-prevention, but they cannot be engaged in ordinary policing.

- * The Constitution provides that a new act must create an independent complaints procedure, which is controlled by people outside of the police.

The principle effects of the instructions or directions which the Constitution provides in terms of a new police act are:

- * Establishing a unified police organisation at the national level, which will integrate all existing forces.
- * Placing organisational control and the maintenance of the police organisation at the national level.
- * Responsibility for the control of the performance will be at a provincial level, but the way the performance is in practise defined is in terms of among others, patrols and police stations.
- * Creating, through the police community forums and the complaints structure, greater transparency.

There is no police entity or organisation which is locally controlled, but local entity governments or individuals will have a greater degree of power to make the operations of the police transparent. The move in the rest of the world is away from merely having complaint structures to having audit structures as well. This means that people can have audits of what the police are doing, without having to have a complaint before investigating and there can be the equivalent of an auditor-general.

South Africa will have an expanded national force, under provincial control, which will be more transparent. The degree to which one can move towards network policing with the new scheme is not apparent.

DISCUSSION

Q: What will happen to the police, who have committed serious crimes? Will they be incorporated into the new force? Will these police be transferable from region to region, by way of promotion, or some other way?

Q: Section 141, powers and functions of local government, states that, "local government shall make provision for access by all persons residing in its area of jurisdiction to water, sanitation,

transportation facilities, electricity, primary health, education, housing and security". This gives the specific responsibility to local government to ensure that everybody in its area has access to security.

CS: This appears to be a contradiction, because there is nothing in the Constitution that specifically allows local government to exercise that particular responsibility. This may be a tension which can be exploited. The chapter on the police excludes local government from any control over the police. Depending on the policies of the government, this can be used to create networking of policing or other institutions of security, which will allow a move towards the contemporary model.

Q: What mechanisms can be put in place to ensure that the police stay loyal to the government in power and the extent to which they are politicised?

CS: There is always a suspicion within a parliamentary government, that the police will be used by a partisan government, especially in a winner-take all system, where a government has a majority.

In the West there has always been an attempt to keep the police at arms-length from the government. The technique is two-edged, because the attempt is to create police independence.

In Canada a Minister cannot instruct a police to do anything, nor ask why they have acted in a particular way. This can only be done in a court of law, which happens rarely.

In South Africa, police are keen on the notion of police independence. It is a good idea that police should determine how the policing takes place, and not the government. It is necessary to come to some other solution of how to make sure that partisan government control does not exist. However, political control over the police is necessary, but one should make sure that what the politicians do is transparent, as they attempt to control the police.

At the moment, as the Constitution is set out, the only control lies at the provincial level, because there is a built-in implicit notion of police independence. This means that, although the provincial commission will propose who will be the head of the provincial police, the proposal has to be approved by the provincial

government.

If the provincial government is unhappy with the way the head of the provincial police operates, it can institute proceeding in order to have him or her removed. But there is no provision for any kind of regular supervision in terms of government. If one is unhappy with what an independent police do, at the moment one can get rid of the head.

Q: What is the process of re-incorporation?

CS: This is not an issue that is determined in terms of the Constitutional proposals, but one that will have to be determined in the police acts.

Q: What is the composition of the police community forums and the lines of command?

CS: The answer to the question lies in the reason community policing is needed. It is different to local political control, which will place the police under a municipal council.

The Constitution does not specify who will control the community policing forums. It is a model that comes from a number of places in the world, especially Britain and Canada.

In the British model, the law requires the police to establish a kind of community policing forum, so that the police will consult and get community input.

This area is left open at the moment in the Constitution and any new Police Act can spell out how this should be constituted. As it is established now, it is an issue of policy that is crucial, because, although it is in direct control, by making the police transparent, one can get a lot of control directly.

This is an important point of intervention for controlling the police, because it allows not only for advice, but it is possible to monitor how they respond to the advice. Therefore, although the police do not have to do anything necessarily, one can monitor what they do and publicise it, if they do not respond. So it becomes indirectly a way of putting pressure on the police. The issue of a composition of the forums is an important one and is something that can be spelt out in the police act.

Q: A clarification is needed on Section 21, sub-

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section 3, which allows for the appointment of police for local authorities and municipal areas.

CS: In terms of the rural areas, the police will police everywhere and local police is merely a by-law police or there to help people to protect their homes.

Q: Who controls policing?

CS: The issue of who controls policing is one that the Constitution is quiet on. What the act should consider is private policing. The South African middle-classes and the whites are mainly policed by private police. This phenomenon has been growing all around the world and private police outnumbers public police, either by one-and-a-half to one or two to one.

In South Africa, the estimate is that private police outnumber public police four or five to one. One can get, and this ties to the issue of industrial relations, a dual system of policing. There is the state police, which is controlled by the regime, and corporate police, such as Anglo-American and Rand-Barlow police, who are well-armed.

This is one of the reasons why it is dangerous to assume that if policing legislation exists, it deals adequately with policing, because in South Africa there is a great inequality in the provision of security.

This happens all over the world, but the situation is particularly clear here. The middle-class controls the state, who control the public police, who actually police the poor. The middle-class also directly control private security, who police them.

The issue of private security is important, while there are no directions within the Constitution.

Q: Should the police carry fire-arms openly?

Q: Will the new government pay if citizens sue the police for past acts of violence causing disabilities?

Q: How will the new government deal with the police or paramilitary structures, such as the internal stability unit?

Q: Will the police unions retain their present structures?

CS: The issue of unions is open. If one looks at models around the world, these indicate that these are usually special kinds of unions that restrict the ability to withdraw services etc.

Q: Provisions for industrial relations?

Q: Can the speaker elaborate on the Canadian model of policing, which allows the hiring of cheaper police units?

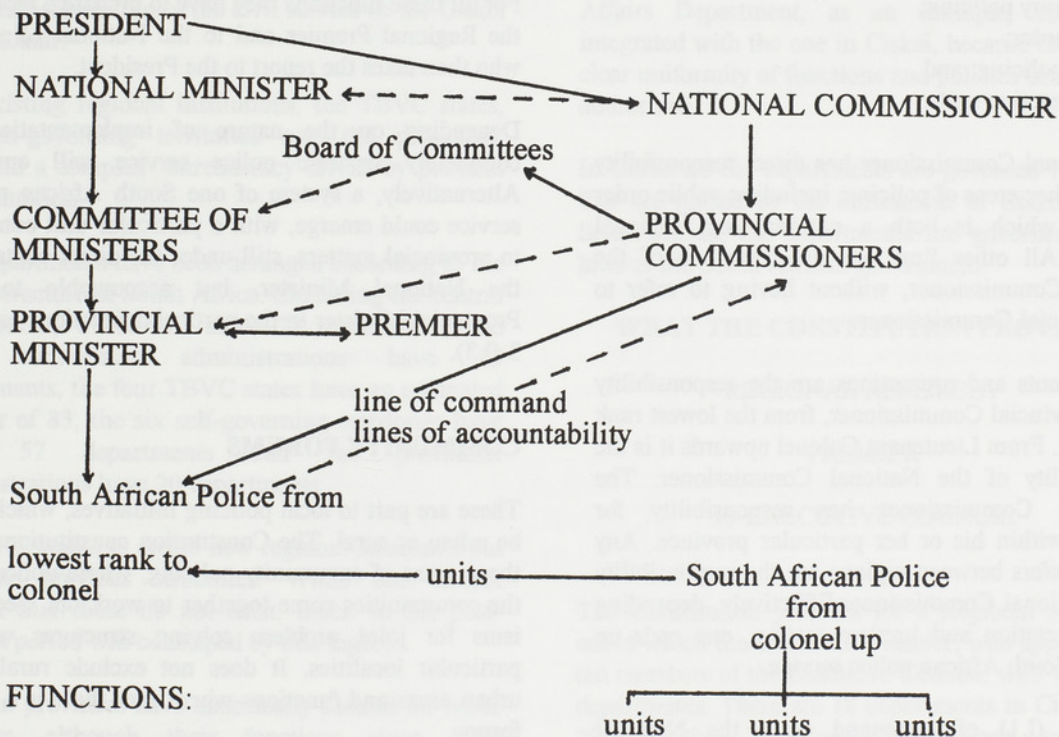
CS: The Constitution merely gives the bare bones of policing. Most of the questions asked are still open questions and involve issues that the new government needs to address and to create policy on these questions.

CHAPTER 11

STRUCTURES OF POLICING

PASEKA NCHOLO

ORGANOGRAMME 1



FUNCTIONS:

- investigate crimes
- community policing
- public order
- visible policing
- crime reaction units

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COMMUNITY FORUMS

The purpose of this paper is to explain the complicated nature of the policing structure in South Africa.

When the ANC went into the negotiations, the

mandate was to negotiate for a central police force, ie. one South African police service. The NP wanted nine, spread all over the regions. The ANC had to come to a compromise arrangement to accommodate the needs and interests of all. But effectively, the

result was a single police force, depending on the interpretation with the command structure determining the structure of the police service.

On the top of the structure is the President, who has the power and responsibility to appoint a National Commissioner, which he does through the National Minister. He, in turn appoints the Provincial Commissioners, in consultation with the regional Premiers. The Provincial Commissioners have the responsibility for local functions, which are tabulated in the Constitution. This covers:

- * investigating crimes;
- * community policing;
- * public order;
- * visible policing; and
- * crime reaction units.

The National Commissioner has direct responsibility over all other areas of policing, including public order policing, which is both a national and regional function. All other functions are functions of the National Commissioner, without having to refer to the Provincial Commissioner.

Appointments and promotions are the responsibility of the Provincial Commissioner, from the lowest rank to Colonel. From Lieutenant Colonel upwards it is the responsibility of the National Commissioner. The Provincial Commissioner has responsibility for transfers within his or her particular province. Any other transfers between regions are the responsibility of the National Commissioner. Effectively, depending on interpretation and implementation, one ends up with one South African police service.

The line (1.1) of command from the National Commissioner (who appoints the Provincial Commissioner structure) is important, because it is unambiguous as the Provincial Commissioner for purposes of all functions, except concerning the Board of Committees (1.2), is directly accountable to the National Commissioner, who in turn is accountable to the National Minister or the President, depending on whether there will be a Ministry that deals specifically with policing.

All the Provincial Commissioner structure are to be constituted into a Board of Commissioners, chaired by the National Commissioner, with the specific purpose of co-ordinating all activities of the police in

all the provinces. In addition to this, there are certain functions for all these functions here.

The Provincial Commissioner is accountable to the Provincial Minister, who is the person responsible for policing in a particular province.

For these functions as well, all the people responsible for policing in the provinces will constitute a Committee of Ministers, which will be chaired by the National Minister, in the same way that the Board of Commissioners will be chaired by the National Commissioner.

For all these functions they have to prepare a report to the Regional Premier and to the National Minister, who then takes the report to the President.

Depending on the nature of implementation, a completely separate police service will emerge. Alternatively, a system of one South African police service could emerge, with a particular unit confided to provincial matters, still under the direct control of the National Minister, but accountable to the Provincial Minister in the particular functions on line 3 (1.3).

COMMUNITY FORUMS

These are part to local policing initiatives, which can be urban or rural. The Constitution constitutionalises these areas of community policing, where police and the communities come together to work out mechanisms for joint problem solving structures within particular localities. It does not exclude rural and urban areas and functions where ever there is a local forum.

The Provincial Commissioner is under an obligation, for instance, to make sure that these structures are set up in particular areas. This does not exclude the smaller services like the metropolitan police service, which will only have the responsibility of implementing or enforcing by-laws.

In this draft of the Constitution, patrolling was struck off the list, as this was seen as a function of the traffic police, but it was re-inserted in the technical committee, at the stage of drafting. However, it does not necessarily influence the nature of the arrangement.

CHAPTER 12

THE CIVIL SERVICE: PROBLEMS OF TRANSITION WITH PARTICULAR REFERENCE TO CISKEI & TRANSKEI

Dalindyebo Nase

The purpose of this paper is to look at the provisions in the draft Constitution, followed by a look at the Constitution and what can be drawn from it for provincial purposes as well as a look at the problems of the transformation of the civil service in the Ciskei in particular.

The existing regional institutions, the TBVC states, the self-governing territories and the provinces, represent a complex bureaucracy driven by political fragmentation.

The departments have been arranged according to the racial structure of South Africa. Excluding the central government, which has about 28 departments, the three own-affairs administrations have 15 departments, the four TBVC states have an estimated number of 83, the six self-governing territories have about 57 departments and the provincial administrations have 20 departments.

The ANC wants to create new regional structures out of these previous structures. While one cannot pretend that these do not exist, much in the post-election period will be shaped by this legacy.

The four provinces have historically catered for white interests, although their functions since 1986 changed. The TBVC states and the self-governing homelands have authority over a wider range of functions than the provinces. The TBVC states could be regarded as regions, like, for instance, the Eastern Cape region. A region in South Africa is smaller than a province.

Besides the trappings of independent statehood, which the TBVC states possess, they have departments that provide services, such as foreign affairs, defense, agriculture, forestry, water affairs, justice, etc..

The creation of new regional authorities, in the light of this information, cannot be reduced to the simple integration of the various existing regional departments, with similar responsibilities. The Water Affairs Department, as an example, cannot be integrated with the one in Ciskei, because there is no clear uniformity of functions and policies between the authorities.

In Ciskei all the departments are governed with laws that are passed by the Parliament of Ciskei and in South Africa, the departments are governed by the laws of the South African government.

WHAT THE CONSTITUTION PROVIDES

REGIONAL ASSEMBLY

PREMIER

10 EXECUTIVE COUNCIL

The Constitution provides for a Regional Assembly out of which the comes the Premier, who appoints the ten members of the Executive Council, who will head departments. There are 18 departments in Ciskei and 20 in the Transkei. Furthermore provincial departments are operating in the white corridor of the Eastern Cape.

The functions given to the provincial governments are in schedule 6, and have only ten executive council members.

It is not yet clear whether the Premier will have a department, but the following departments are the departments likely to exist:

1. Finance

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2.	Local Government, Housing and Traditional Leaders	departments will be. It is also important to work out the ratios: if a hundred people will be employed, how many citizens will one person service? One for 20, one for 15 or one for ten?
3.	Agriculture, Land and Nature Conservation	
4.	Education, Language and Culture	
5.	Health and Welfare Services	There are factors that presently work against integration, such as:
6.	Police and Road Traffic Regulation	(1) The composition of the future civil service is unclear.
7.	Media, Post and Telecommunication	(2) The three administrations in the Eastern Cape have never worked together: the Department of Education was not linked to the Department of Education and Training, nor the department in Transkei. In terms of efficiency or competency, there are members of the civil service who are afraid of losing their future positions.
8.	Works, Roads and Transport	
9.	Regional Planning and Development	
*	Trade and Industry	
*	Tourism	
*	Urban and Rural Development	(3) The top bureaucrats are a problem, for example, in the Ciskei, from the Director upwards, the 126 people in this category have a salary expenditure of R 20 399 855, excluding the Military Council and Ministers.

Faced with a situation where it is necessary to cut down on departments as they exist in Ciskei, with 32 000 employees, and the Transkei, with 91 000 employees, it is necessary to consider how these people can be re-distributed and how large the

SALARY EXPENDITURES FOR ALL CATEGORIES OF STAFF IN THE CIVIL SERVICE AS AT 31 MAY 1993

POSITION	NUMBER	SALARIES
Below Directors	16 160	337 052 981
Unifrom Staff	4 682	136 273 208
Teachers	8 845	389 935 571
Post & Telcom	742	20 704 601
TOTAL	30 555	904 366 216

Source: Ciskei Government - Central Personnel Administration

The breakdown of the category of Director and above, in terms of the statistics available, shows us that there are 60 Directors in related positions in the Ciskei.

They are related to:

- (1) those people who were the ones who were

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seconded from South Africa to Ciskei, perhaps as advisors and experts;

Chief Director and related

26

Deputy Director General and related

30 empl.

(2) those who had lost their jobs, because they fell out of favour with Gqozo, perhaps having supported the previous leader;

The figure for the Ministers' salaries are not included, because there was a problem getting the exact data, but a person was found who set the number at R 227 000 per year.

(3) it refers to people who are in other departments, for instance in the department of economic development, but his or her functions are such that s/he is at the level of a Director.

A further problem was that it was not possible to get information of deductions and other benefits, such as housing and transport, that these people receive.

Department	R'000	%
Council of State	23 374	1.1
Foreign Affairs	12 487	0.6
Defence Force	99 910	4.6
Auditor General	4 954	0.2
Education and Culture	489 506	22.6
Agric., Forestry & Rural Develop.	119 874	5.5
Justice & Constitutional Develop.	22 291	1.0
Health, Welfare & Population Dev.	518 686	23.9
Finance & Economic Develop.	254 111	11.7
Internal Affairs & Land Tenure	26 759	1.2
Manpower Utilisation	14 407	0.7
Transport & Aviation	56 114	2.6
Public Works	333 219	15.4
Posts & Telecommunications	47 914	2.2
Police	102 927	4.7
Prisons	30 630	1.4
Traffic	4 150	0.2
Commission for Administration	7 886	0.4
TOTAL	2 169 199	100

Table 4: CISKEI EXPENDITURE PER DEPARTMENT 1993/4

POSSIBLE SOLUTIONS

Faced with the programme and the costs of running the civil service, the re-structuring should begin from the Director and related up to the Chairperson of the Military Council, for the following reasons:

1. Many of these people are professionals and can find alternative jobs.
2. Early retirement packages can be negotiated, which can be calculated and be given to them over, for example, ten years.

Other solutions concerning the rank and file:

1. They need a more clearly defined role in their administration in the future democratic South Africa.
2. They need to know how the process of transformation will happen and how long it will take. Most believe the process will happen over-night and many have pensions and other responsibilities and, having worked in the administration for years, the belief that they will be kicked out and others

brought in.

3. Political leaders need to intervene in this process, because of these fears, as people tend to be reluctant to help make the process successful.
4. There are forums, such as the BKDF, one in the Orange Free State, Natal, Northern Transvaal and the Eastern Cape, which need to be co-ordinated and should have common objectives.

The forums in different provinces will be discussing divergent issues, that are not related to the transformation of the civil service nor individuals. Direct lines of communication are needed, for the transformation of the civil service and a proper co-ordination of all the forums.

DISCUSSION

Dalindyebo Nase

Q: The problem in the region seems to be what to do with the Director Generals. Has an audit been done on their skills profiles? In the Provincial Administration of the Western Cape, there are about four departments with four white Director Generals.

If we set up a new provincial government with ten departments, Director Generals will be needed for those departments. For regions like the Western Cape and nationally, these will have to be imported from the homelands. Are their levels of skills sufficient to take over the job?

DN: Instructions have recently been issued to start compiling a human resource data-bank. It is unfortunate that, when data is requested it has not been given from Ciskei and Transkei. Furthermore, at the time when the information was requested, some senior people in the management, for example in the Ciskei, were expelled.

Q: In schedule 6, the negotiators have managed to cluster all the competences into ten various departments, but one area has not been included, which is casinos and gambling.

DN: It is not certain whether these issues should fall

under the Department of Finance, should be separated or placed under the Department of Trade and Industry.

Q: A possible solution is to address the financial impact of the having so many departments. How will point 3 of the rank and file 'possible solutions' (political intervention) do in terms of palliating the financial impact?

Q: In the Transkei, Ciskei and the Eastern Cape, no audit seems to have been done on the human resources and the number of employees in the regions. Therefore no-one knows what the future holds for the civil servants.

Q: There is a lot of corruption in Transkei, such as instant promotion of the top hierarchy of the civil service. What does this imply for the new government? Should these remain in their high-salary positions, or should they be paid off.

Q: The looting has already begun. The media tells us that Lucas Mangope has taken R93 million out of Bophutatswana, in the form of art works.

Q: Can the speaker elaborate on the TBVC states that will be regarded as regions?

DN: The TBVC states can be treated as regions because of the functions they are performing.

Q: The forums that exist, in the Border/Kei region, for example, are the creation of big business, which are attempting to achieve some legitimacy. Big businesses are also creating sub-committees, even the Regional Education and Training Forum, that must be affiliated to them. How does the speaker conceptualise these?

DN: The briefing was that, for example, the BKDF was initiated by the ANC. The comrades occasionally tend to lose their initiative and this gets exploited. For instance, the forum in Bloemfontein is the initiative of the ANC, and there are others, which have working committees, for example in human resources, which are meant to address the problems of the civil service or the public sector.

Q: Those low in the structures of the civil service can be re-orientated and re-trained. There is an abundance of human resources in the form of drop-

outs and matriculants, who are not at school.

The NGO industry should be engaged because they are well funded at present. They can be engaged in training people for the civil service programme, which can work with the reconstruction and development programme of the ANC.

It will be a good idea to establish a civil service training programmes, which will also re-orientate and retrain the comrades that are still on the lower levels of the civil service.

Q: It is important to accept that the country cannot maintain a large bureaucracy. Is it true that in 1991, when there was a civil servants' strike in the Ciskei, the South African government was able to export civil servants from Pretoria (far smaller number than that of the Ciskeian civil servants who were on strike) and that this small number effectively performed the jobs that needed to be done within the civil service?

DN: There is no information available to show that civil servants were imported. If they were, they stood a good chance of being successful, because they are exposed to technology and the civil servants in Ciskei do everything manually.

CHAPTER 13

THE WAY FORWARD

Zola Skweyiya

It is necessary to encourage all of us to think deeper about the problems that have merged from this workshop. The aim of the workshop was for delegates to leave here with a general idea of what regional government can be and what model can be used for the future, considering all the other regions of South Africa.

It is important to stress that this is the first time that such a conference has taken place and that there are no fixed positions on any of the issues. We are here collectively to construct a product that can be sold to the movement and to other parties - even to the National Party.

It seems that, according to our plans (which have not been put before the National Executive Committee), we will be demanding that the ANC come forth with a clear model of government, at a national level, which will not necessarily have over 27 departments, as stated as the maximum in the Constitution.

More importantly, we have to produce a model for regional government that will serve our interests. There is no set plan and we are asking you for your contribution and participation in the process.

This is not the first time that comrades have been asked to contribute, because it also happened when the construction of the Constitution began. It was from the ideas of workshops and conferences such as this, that the Constitution was constructed. To a large extent, we have been able to win what we wanted, because the process was collective.

We are in the process of setting up a Commission, which we hope will be acceptable. The Commission will be composed of several parties, that will look at the question of new governance.

We are demanding, from all the regions of the ANC, that they should have at least some idea of what

regional government will be and that a Civil Service Unit should be set up in every region.

There should also be a Regional Government Planning Unit in every region, which will look into all the problems that have been raised. It will start with Parliament, and the question of the re-integration of the TBVC and self-governing states.

The implications of this on the human resources of the ANC is to keep the ANC alive in these regions, now more than ever. Furthermore, we need to look at the possibilities of the process in which we are involved.

There is a need for the ANC, in the different regions, to start considering not only the model, but a shadow cabinet in each region. For instance, the Western Cape, if Boesak is chosen as Premier, who will be in his Cabinet? Who in the Western Cape will be going to Parliament, and more importantly, who will go into the civil service?

There is a tendency in the movement to underestimate the importance of the civil service. But after having struggled for 80 years, the main aim is to take over the state.

The agreement that we have negotiated is not completely in our interest, because the majority of the present civil service will still remain. It is the responsibility of the leadership of the ANC on all levels, to consider key positions and people within the civil service, both at national and regional level - perhaps even at local level - and try to identify people who will fill these post as soon as we take over power.

We were able to take on the entire state with umKhonto weSizwe and confront the South African Defence Force and the security forces. This should make the organising of this matter easy. We know who is capable of doing what and if we think there is a need, we should be able to identify the right people

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for training.

Present problems include the fact that we do not get enough of the right people that we need. We have spoken to the Germans, the British, the Canadians and the Americans about training people at different levels.

The Canadians have asked for at least ten to 20 people to be attached by January to top posts in Canada, starting from the Prime Minister in Ottawa.

The same applies to the Germans and the Americans who have indicated that they are also prepared to attach our people at the highest level, including Congress and the White House.

These are issues that can not be put away for tomorrow, but have to be dealt with in the RECs in the four regions represented here. It is necessary to lay out a clear positions and projects.

It is our duty to involve different institutions in the regions, especially the universities, where we can start to prepare people for some courses. By January 1994 we should be able to put forward people for regional and national governments.

This should be raised with UWC, Fort Hare and all other tertiary institutions. Comrades have indicated clearly that there is a need for a skills audit within the Democratic Movement, the ANC and more broadly within the Anti-Apartheid forces.

The question of whether we are capable of encouraging some of the people in the present civil service and in the bantustans to provide the necessary training for them, should be explored.

A further issue is the setting-up of task-forces to look into the above questions in the different regions and departments.

By the time we reach the Conference on Development and Reconstruction, each region should have a clear-cut position and a project or a plan for regional government. (I hope the Transkei, Eastern Cape and Border will be able to come together and produce a plan on all the above issues.)

These plans should include:

- * the development of the regions themselves; and
- * the relations of the ANC in the regions with possible partners beyond the borders, especially with parties friendly to the liberation struggle and who have stood by us, for example the social democrats and other democratic forces.

We have to sell the regions and the problems that we encounter with our plans of reconstruction and development, to these possible partners.

Most of all, it is necessary to appeal on the question of identification of regions. It is a very important issue and should be taken much more seriously than the election list. It seems that everyone wants to get on the list and leave the running of the state to the National Party. This will be an enormous mistake.

We should refocus ourselves on the state, on both regional and national levels in order to ensure that we put the right people in the right positions. Even if we lose the next elections, at least we will have our own people running the state which is a chance that we cannot forego.

We are faced with the problem of training police. There is a one-week course that will take place at Escom in Johannesburg, where people will be re-introduced into the issue of training. After this there is a six-weeks course in Britain, where people will be trained to play a meaningful role in the future police force. It is the responsibility of the RECs that are here to find the right people to go on this course.

A fifth group will be going to Britain soon and we would like you to identify the right people to go. We should avoid the same mistake as the previous time where the project fell out of our hands and we left it to the British to choose the people. The different RECs should be fully involved and choose the right people, who will come back to the region to contribute.

DISCUSSION

Zola Skweyiya and Bulelani Ngcuka

Q: Task-forces need to be discussed at length, otherwise the regions may not be co-ordinated and critical issues may be left unresolved. Perhaps it is necessary to identify the types of task-forces needed and the key areas these should deal with. For instance, what the key areas of training are for the future members of the civil service. A comprehensive training-plan is needed in all critical areas.

ZS: On the question on training, there needs to be a police training scheme that will answers the question on the police and related issues. Generally there needs to be a training scheme in terms of development, economics and gender issues.

Q: It is important for everyone to familiarise themselves with the Constitution. This type of workshop should be held in other regions. For instance, with the Northern Cape linking up with the Southern Free State and the Western Transvaal for joint regional conferences. Here the same presentations can be held at regional level, with a large representation of the regions, so that the Constitutional Committee of the ANC can write a budget for such consultations to take place at inter-regional level.

Q: A date should be set by which the process of having similar conferences throughout the country, should have taken place.

ZS: Similar conferences will be held in the Free State, Transvaal and Natal. The Cape conference is the first, now that we have a Constitution from which we can work. It is the intention to have conferences in the Free State, the Northern Cape and Western Transvaal. These will probably be held in January.

Q: Set task-committees need to be established to ensure the process moves forward.

Q: When the RECs have identified the names of the international training candidates, to whom do they communicate them?

Q: The main aim of the ANC is to win the elections. Has anything been done to train the canvassers on

speech-training and communication skills, to project a uniform image and policies to the public.

BN: This question belong to the Elections Commission, not to the constitutional committee.

ZS: Early last year the election question was moved from the committee.

Q: Seeing that a number of foreign governments are prepared to train ANC members, it is important that the RECs get this information and act on it.

Q: Which field will the Canadian Government be prepared to train the people in?

Q: It is important that persons who are chosen to go for international training knows what s/he is to expect, and what training is available. It is important that information is made available to the RECs so that they can follow up and so that prospective candidates can see what is on offer.

Q: It has been suggested that the RECs should identify who should go on the police course. What kinds of skills or criteria are you looking for, in terms of qualification.

Q: Because we are not fully empowered to engage in this kind of planning and ideology, much more work needs to be done. This is where we often fail. We do not do our home-work and are unable to construct properly.

Q: The notion of a task-force is important, but it needs to have its task clearly set. We must not miss out the need to work with our regional structures and the RECs. Therefore, if a task-force is set up, part of its role should be to communicating with the RECs to ensure that the activities are co-ordinated and combined. This is necessary because it can be destructive to believe that from here we can operate entirely on our own if the task-force is set up.

Q: In order for us to engage in a process of becoming informed, at some point, either at regional or national level, we need to start carrying out not only an audit of the skills available within the ANC, but an audit of existing departments within the public service. We know nothing about the public servants: who will resign, who will be prepared to take on for instance retrenchment packages, etc.. We need this

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information before we work on the assumption that there will be vacant posts or that we will be creating new posts. There are gaps as to what exactly is expected and we will need to have clarity before we can develop concrete ways of moving forward.

Q: A task force linked to the RECs is a good idea, but we need to be informed as we move forward on any task that we set ourselves. Job Mokgoro presented many useful ideas and achieved what he said he would, which was to provide a summary of the issues that are outstanding in each region, and that needs to be responded to.

A further suggestion is that what needs to be done is to look at the Development Bank Restructuring Document, which was recently produced by Wiseman Nkuhlu from the IDT. It received a lot of support. We need to become familiar with this kind of documentation, because it has national facts and figures.

ZS: It is imperative to appeal to the RECs to take this seriously.

Generally, the broad education that is needed includes leadership skills, possibly with a matric, and a good understanding of the political situation in South Africa as well as a clear mandate from the structure of origin.

Q: Is there a problem with the Canadians and the Americans?

ZS: The ANC has been asking them to assist in attaching people to courses in different skills and in different departments. Unfortunately, when people go into a department of their choices, they all want to work in the President's office.

However, people should specialise. There are some, who have been involved with security, the army, economy, health and education, etc.

The Germans and the Canadians have been asked to introduce us to regional government and how departments work at different levels and an agreement has been reached.

There is, however, a language problem with the Germans, especially when people are going to be attached from six weeks to three months. It is

necessary to have someone with whom one can communicate.

We have requested the Americans to attach people at the highest level and possibly to attach people to the economic advisors, Chief of Staff in the President's office or in the Minister's Office, Head of Public Service, civil service, Director Generals in different departments, at national, federal and regional or state level. Also in the President's Department of Information, press secretaries, advisors to the President on different issues, with a special emphasis on scientific matters, gender issues, environment, the Director General at State House, advisor efficiency and effectiveness of government to the President, advisors on health and human services.

The other posts include the economic council, how it works, energy and environmental council, personnel council, the council on housing and inter-governmental and foreign relations.

We have also asked for general training in different issues and for training of judges. There will be a Constitutional Court, and people do not know how exactly it will work, because we are in the process of trying to set it up. We hope that they will be able to assist.

We have asked the Germans and Austrians for help and they have agreed, but the language issue remains a problem.

We have requested training of local government officials from the Canadians and the Americans, including the Mayors and other necessary officials.

Some training has already taken place, but not in an organised manner. Individuals have left, from all parts of South Africa, to be trained in certain skills, and when they came back the majority of them were taken over by private enterprise. It is difficult to compete with the private sector because of the attraction of higher salaries and more perks.

At present we have to be a little more directed and take into consideration other countries that we have asked for assistance. We have also asked the Swedes and the Norwegians, but again the problem of language is a stumbling block.

Lastly, we have asked for attachments in Zimbabwe,

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Namibia and Botswana. We have asked the Commonwealth and the UN Development Programme (UNDP) to assist in financing these projects as these countries do not have the necessary funding. As it is expensive to take people abroad, it may be necessary to concentrate on the southern African region, as it is cheaper, closer and many people do not want to leave their families for a long time.

Q: From a regional point of view: what needs to be done in order to benefit maximally from this programme? What does this imply in practical terms?

ZS: This can be done with the co-operation of the RECs. There should be a Civil Service Training Unit in every region and those which are to be re-incorporated or to amalgamate, have to set up units. This will, in future, co-ordinate the process of training within the regions.

Q: After the detailed and intense discussion for the past two days, one has come to the conclusion that to expect that this kind of responsibility can be handled by a certain collective on a part-time basis, is not practical. We need full-time people to prepare for governance and to produce a clear and simple organogramme to be applied, within a period of about four months. Perhaps it is not possible for the head office to consider appointing people for regions, but perhaps it can give regions some allocation, so that these can appoint people full-time. We can come up with the task-forces, but we need at least one person in each region to co-ordinate.

ZS: The suggestion gets the Chair's full support, but this needs to be addressed to the Treasurer. It will be put to him, and if it is possible to get a sponsor we will try our best. That will mean 14 to 15 people throughout the country.

Q: It was requested that the comrades come up with a clear-cut plan of what needs to be done in the regions and comrade Zola has given all the options for training abroad. Can these be compiled into a detailed document.

BN: It will be a good idea to set up a time-frames, because experience has shown one important aspect: that in conferences and workshops like these, agreements are reached and time-frames are set up for the information to reach the regions. This should include the information on all the documentation of

this particular workshop, the training that has been discussed and also the inputs.

BN: Can comrades make proposals on the time-frames? For example, the Civil Service Unit by this date and regional proposals by this date.

Q: Why do we not consider attachments internally. We now have a Transitional Executive Structure and it will be reasonable to begin to demand that some of our people be attached in existing government departments. We can persuade universities, schools or departments to release them on a seconding basis, so that we can have our people as shadows within departments. This is an option that can work and it is immediately available.

BN: The issues that were raised here was that we need to set up a Civil Service Unit in each region and these should be implemented soon. This is the first task and we recommend that the people take this back to the regions.

Secondly, we need to identify the people who will go into the civil service. Once this is done, we have a core to draw from for training. It is no use training someone, who will end up working for Oppenheimer or Anglo-American. We need to decide when this will be done.

Thirdly, we need to agree on how to set up a shadow cabinet. If we are going to say to the Canadians that we want to know how a Minister of Media and Telecommunications functions and what the tasks are, a shadow Minister should be sent to that attachment.

The questions of rationalisation, integrating the various civil services, Transkei, Ciskei, Bophutatswana and whom we target of the civil service in these regions is important.

Q: We spoke about providing training, how will all these issues be dealt with? We are trying to exchange ideas as a department of the ANC, as the constitutional committee. We need to be able to say that we have raised these issues, the ideas and that this is the programme that is beginning to emerge. But, it has to come up from the regions. We now have to follow this up with action.

We have asked the question: "what are you doing

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about the issues, and can we link up in the process and execute the tasks?" This is how the discussions about time-frames, task-teams and task-forces are interpreted. The discussions that we have had is ultimately to empower our own organisation, and not only for self-interest. How do we take this process forward?

Q: While the points raised are appreciated around the issue of attachments, especially in key areas, it seems to be a lot more complex. When I try to put the ideas into practise there is a contradiction in that some of the people that will be identified to occupy certain Ministerial positions, are presently REC members. It poses problems within the regions when REC members suitable for training is faced with the added responsibility of preparing for the elections. What is the solution for this?

The most appropriate way will be to identify certain experts, locate them in the regions, so that while

comrades are busy doing organisational work, they also benefit in terms of getting the training from external experts; a two-pronged approach. Those who can be released, who are not necessarily in the Executive, can be sent out, but we do need people to be located in regions.

Q: Even if we do not lose the next election, being a member of the REC does not mean that this member will be going to Parliament, or into the civil service. The organisation needs comrades to remain, who will carry forward the ANC. Let us not confuse state power and organisational power.

BN: When the comrades go back to the regions, they must fix the time-frames.

ZS: When looking at the civil service, it is important not to forget the army and the police is part of the service, particularly the administration.

SUMMARY OF TRAINING OPPORTUNITIES:

Britain	Police training	6 weeks
Escom	Training	1 week
Canada	20 people Regional government Mayors Office PM's office	January 1994 6wks - 3 months
America	Congress and White House Chief of Staff DG of State House Mayors Office	
Germany	Top level and PM office Regional government	(language problems) 6 wks - 3 months
Sweden		(language problems)
Norway		(language problems)
Zimbabwe	Attachments	(needs outside funding)
Namibia	Attachments	(needs outside funding)
Botswana	Attachments	(needs outside funding)

